

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 211
CASE NO. 211

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Stattler Enterprises) to plow with a backhoe at the North Yard Car Shop area in Hamtramck, Michigan on February 18 and 19, 2000. (System Docket MW-0014).
2. The Carrier further violated the Agreement when it failed to provide a proper advance notice of its intent to contract out the Maintenance of Way work described in Part (1) hereof.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Class 2 Machine Operator A. Harvey shall now be compensated for ten (10) hours' pay at his respective time and one-half rate of pay.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

As the Statement of Claim describes, the instant dispute challenges the Carrier's use of an outside contractor to perform snow removal work in the Detroit metropolitan area in February of 2000. While the parties expended considerable effort jousting over the notice and scope coverage issues, this case must be resolved on the basis of very straightforward principles of on-property record development.

The language of the parties' Scope Rule explicitly recognizes an “emergencies” exception with respect to the contracting of work. It expressly includes “... fires, floods, heavy snow and like circumstances ...” within the contemplated definition of emergencies.

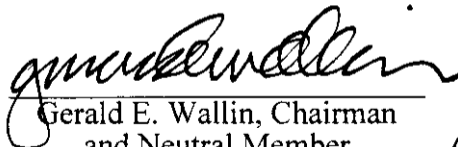


During the development of the on-property record, an emergency/heavy snowfall situation was repeatedly asserted by the Carrier. The lack of an emergency was likewise repeatedly asserted

by the Organization. Eventually, however, the Carrier provided evidence to support its assertions. It supplied newspaper articles covering the Claim dates that referenced facts like 1) snow accumulations of 1-2 inches per hour; 2) total accumulations of 6-10 inches; and 3) a snow emergency being declared by the City of Detroit at noon on February 18th. While not overwhelming proof of the disputed emergency issue, it is nevertheless some evidence in support of the Carrier's assertion. In the absence of any opposing evidence from the Organization to support its assertions, and there was none, the Carrier's evidence is enough to establish the fact.

Accordingly, on this record, we must find that a snow emergency existed which permitted the Carrier to contract the work as it did.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member
R. C. Robinson,
Organization Member
H. J. Palmer,
Carrier Member

Date: 12/30/2003

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 212
CASE NO. 212

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The dismissal of Machine Operator J. H. Dennis for his alleged insubordination for failing to follow instructions and his alleged absenting himself from duty without proper authority on June 4, 2002 was arbitrary, capricious, excessive and in violation of the Agreement. (System Docket MW-0042).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the remedy prescribed by the parties in Rule 27, Section 4.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed for insubordination and absence from duty without authority arising out of his actions on June 4, 2002. At the time of his dismissal, Claimant had more than thirty years of service with the Carrier. His prior discipline record, as introduced at the investigation, showed only one entry dating from 1970. At the Board’s hearing, however, the Carrier asked us to consider Award No. 153 of Public Law Board No. 3514, which restored Claimant to service without back pay from a 1985 dismissal. That Award was issued in 1987. Claimant’s record since that time has apparently been clear.

Approximately one year after his 2002 dismissal, the Carrier unilaterally restored Claimant to service. His time out of service was converted to a suspension without pay pending our review of the matter. Accordingly, we review the propriety of that suspension.

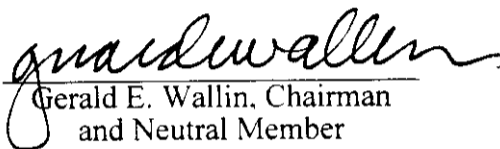
The Organization has asserted a procedural objection in addition to challenging the merits of the discipline. The Organization maintains that Claimant was improperly withheld from service


in favor of the Carrier. In light of this circumstance, the evidence must again be taken at face value, with no basis for accepting one account over the other. Therefore, we cannot find the evidence to be sufficient to establish that Claimant was absent from duty without proper authority. Accordingly, the burden of proof has not been sustained as to this charge either.

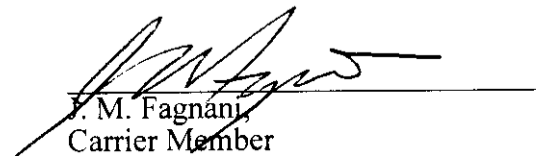
Given the state of this record, we do not find the record to contain substantial evidence in support of either charge. The Claim, therefore, must be sustained in its entirety. The Carrier is directed to make Claimant whole for all losses resulting from his time out of service.

AWARD:

The Claim is sustained.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


J. M. Fagnani,
Carrier Member

Date: 2/18/2004