

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 67

Case No. 67

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: S. V. Powers

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces to perform track and bridge dismantling and construction work at Bayonne Yard, Bayonne, New Jersey (System Docket CR-3051). (2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Mechanics P. Clark, B. Colon, B. Cosby, C. Falcao, M. Fidalgo, R. Frekey, M. J. Gittens, M. D. Gittens, Jr., F. Hernancez, J. Kratz, D. Kurak, R. Matushoneck, R. Roman, P. Rivas, G. Sanchez, G. Sell, J. Sullivan, S. Takas, H. Trumpore, R. Zarfuss, B. J. Parsons and R. Pardo shall each be allowed pay for an equal proportionate share of the straight time and overtime man-hours expended by the outside contractor performing the work referred to in Part (1) above, beginning November 21, 1986 and continuing until the violation is corrected.

FINDINGS:

Upon the whole record and all the evidence, and after hearing on December 17, 1990, in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

DECISION: Claim denied.

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OPINION

This dispute arises from a claim filed in behalf of MW Bridge and Building Employees, on the basis of allegations that the work jurisdiction and notice provisions of the BMWE Scope Rule were violated by the Carrier's action of improperly contracting with an outside company to perform track and bridge dismantling and construction work at Bayonne Yard, Bayonne, New Jersey. The Organization asserts that the Carrier's contention that no Agreement violation occurred because the State of New Jersey had control of the project is not valid.

The Carrier submits that no Agreement violation occurred because the subject work was for the sole benefit of the State of New Jersey, and because the State had control of the work from its commencement to its completion.

* * * * *

The subject work arose from the plan of the State of New Jersey to construct a new highway in 1986 in the vicinity of the Carrier's then existing industrial track and bridges that ran between Bayonne Yard, westward, to the Avenue A industrial track in the vicinity of John F. Kennedy Boulevard. Because the State needed the then existing - the "old" - industrial track between Bayonne Yard and Avenue A industrial track, for the new highway (Route 169), the State agreed to build a "new" industrial track as a substitute for the old industrial track.

The land on which the new track was to be built was not owned by Conrail

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when the project commenced, but Conrail expected the land to be deeded to it by the State. The deed of conveyance relating to the new track had not been executed when the record on this dispute was closed. Likewise, the property on which the old track had been situated had not been deeded by Conrail to the State when the record was closed.

The abandoned main line of the Central of New Jersey Railroad (CNJ) and the old industrial track had parallel tracks from the Bayonne Yard to the Avenue A industrial track. The abandoned CNJ main line and the old industrial track shared four (4) elevated bridges that carried trackage over four (4) streets in Bayonne.

The State commenced removing portions of each of the four bridges that carried the abandoned CNJ main line in July 1986. The new industrial track was dedicated to Conrail's use on February 8, 1988. The demolition of the remaining portions of the bridges carrying the old industrial track commenced on February 15, 1988.

The State of New Jersey paid the entire cost of the project: the construction of the new industrial track and the dismantling of the old industrial track.

In assessing these facts the Board finds that the Carrier did not control the work performed on either the old or the new industrial tracks and that the sole purpose of the project requiring the work was for the State of New Jersey to acquire the property that the State needed for the State's highway construction project, i.e., the old industrial track. The State paid the entire cost of the project, including certain incidental track work performed by Carrier forces in tying into existing Carrier owned trackage.

The project was for the benefit of the State and was controlled by the State.

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These considerations concerning the purpose of and the control of the work are not affected by the fact that deeds conveying ownership of the properties had not yet been executed by the State and Conrail when the record on this dispute was closed. The use of the old track as a viable railroad operating property ended when the State's contractor began demolition work on the old track on February 15, 1988.

In these circumstances it cannot be said that the Carrier violated the Agreement; therefore, based on the record as a whole, the claim will be denied for lack of requisite record support. Third Division Award Nos. 13745 and Award No. 2, PLB No. 747.



Fred Blackwell
Chairman / Neutral Member
Special Board of Adjustment No. 1016

April 15, 1994.

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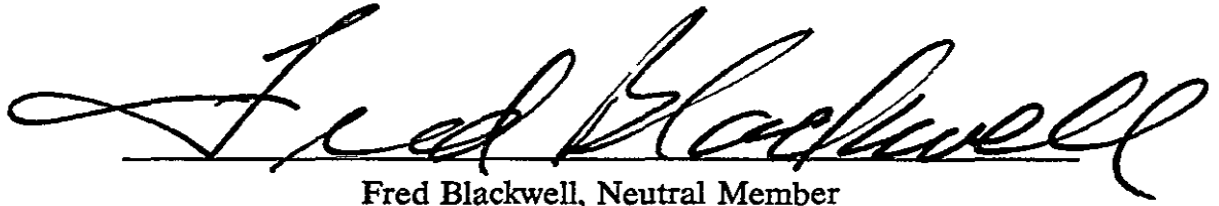
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AWARD

The Agreement was not violated. Accordingly, the claim is hereby denied.

BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016


Fred Blackwell, Neutral Member


S. V. Powers, Labor Member


J. H. Burton, Carrier Member

Executed on 5/3, 1994

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