

PUBLIC LAW BOARD NO. 2960

AWARD NO. 120
CASE NO. 158

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when outside forces were used at Mile Post 475.9 on the Casper subdivision to connect the C&NWT operating properly to a segment of the coal line. (Organization File 6T-4559; Carrier File 81-84-173)
- (2) As a consequence of the aforesaid violation, Western Division furloughed employes M. S. Madsen, K. M. Donahue, W. J. Wasserburger, R. C. Ryan, J. M. Goldrick, S. A. Rabe, T. A. Turman, P. D. Krantz, F. A. Wood and W. C. Fisk shall be allowed ten (10) hours each at their respective rates of pay.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are undisputed. On March 12, 1980, the Carrier entered into an Agreement with the Brotherhood of Maintenance of Way Employees covering the construction of the Western Coal Line by outside forces. The general purpose of the Agreement was to allow the Carrier to let to contractors and arrange to be performed by contractors' forces "any and all work in connection with the construction, rebuilding, and dismantling of tracks, structures, and/or other facilities pertaining to such Western Coal Project." One segment of this construction was a new line from Crandall, Wyoming south to Joyce, Nebraska. The Agreement contained the following language specific to the new line Crandall to Joyce:

"New Line Crandall to Joyce. All work in connection with such new line and sidings, including grading, distribution of material, placing ties and ballast, installing bridges and culverts, and constructing auxiliary buildings shall be performed by contract.

Once construction of this track and auxiliary facilities has been completed and such track and facilities have been accepted by the C&NWT, and the General Chairman has been notified thereof, such line shall thereafter be subject to the provisions of Rule 1(b) of the existing agreement.

On March 27, 1984, the Neosha Construction Company provided one (1) Track Foreman, two (2) speed swing operators and seven (7) track laborers at Mile Post 475.9 on the Casper Subdivision for the purpose of connecting the C&NWT operating property to a segment of the new coal line. The ten men dismantled a portion of the operating property, performed grade work, realigned track sections, applied track appliances and prepared the connection

for train operations. Neosha Construction Company expended 100 man hours or ten (10) hours per man between the hours of 7:00 a.m. and 5:30 p.m. relative to this project.

The thrust of the claim is that the work in question actually took place west of Crandall and thus was on the Carrier's operating property and not covered by the Crandall to Joyce Agreement. Accordingly, they argue that Rule 1(b) controls and states:

"(b) Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common carrier service on the operating property. This paragraph does not pertain to the abandonment of lines authorized by the Interstate Commerce Commission."

It is the opinion of the Board that the Agreement was not violated. Although the work was technically west of Crandall, the work performed most reasonably falls within the intent of the March 12, 1980, Agreement.

Under that Agreement the contractor would be permitted to perform all work in connection with the construction of the line and after its construction was completed the line would be subject to Rule 1(b). It is most reasonable to apply this agreement by finding that the construction of the new line could not be completed until it was physically connected with the operating property. Obviously, in order to make the connection

and complete the construction some of the contractors work had to occur on the operating property. However, this was clearly incidental.

AWARD

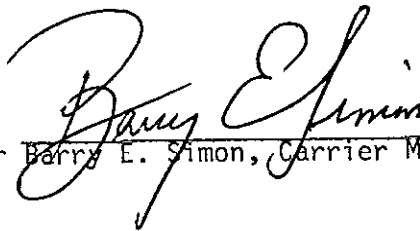
The Claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay, Employee Member



Barry E. Simon, Carrier Member

Dated: Oct 21, 1986