

PUBLIC LAW BOARD NO. 2960

AWARD NO. 140  
CASE NO. 205

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when outside forces were used to excavate dirt, construct concrete forms, pouring and finishing concrete and stripping forms in connection with the construction of a new building in Chadron, Nebraska.
- (2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plans to assign said work to outside forces.
- (3) Because of 1 and/or 2 above, Claimant C. J. Carter, R. L. Haider, D. J. Brech, R. M. Piklapp, D. D. Anderson, G. R. Crile, R. L. King, J. W. Nickeson, D. V. Wood, D. E. Grant, D. L. Remington, J. W. Cannon, T. R. Schave, B. W. Stopplemoor, K. L. Cooper, S. D. Connors, W. J. McIntyre and D. L. Suttom shall each be compensated an equal proportionate share of all man hours rendered by the employes of the outside concern.

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 claim before the Board cannot be considered on its merits. The reason for this is that the claim was not appealed to the Board within the 9 month time limit after the Carrier's final decision.

Rule 21(c) states:

"The requirements outlined in paragraphs (a) and (b) pertaining to appeal by the employee and decision by the Company shall govern in appeals taken in each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Company to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless, within nine (9) months from the date of said officer's decision, proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a System, Group or Regional Board of Adjustment that has been agreed to by the Parties hereto as provided in Section 3 of the Railway Labor Act. It is understood, however, that the Parties may by agreement in any particular case extend the nine (9) month period herein referred to."

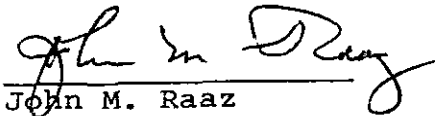
In this case the Carrier declined the claim on May 20, 1986 and it wasn't listed to the Board until July 15, 1988. This is obviously beyond the time limit and we find no convincing evidence that the Carrier waived its right to enforce Rule 21(c). The fact the Parties conferenced the claim a second time on March 27, 1987 in an attempt to settle the claim is irrelevant.

AWARD:

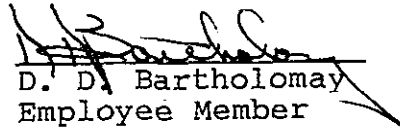
The claim is dismissed.



Gil Vernon, Chairman



John M. Raaz  
Carrier Member



D. D. Bartholomay  
Employee Member

Dated:

Nov. 1, 1989