

PUBLIC LAW BOARD NO. 2960

AWARD NO. **148**
CASE NO. 206

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 it allowed or otherwise permitted an outside concern to plaster walls, paint, or re-finish cabinets and counters in the Ticket Agent's Office in the Lake Forest Depot. (Organization File 9KB-4159T; Carrier File 81-86-45)
- "2. B&B employes R. J. Jahnke, R. Loeffler and E. Severns shall each be allowed an equal proportionate share, at their applicable rate of pay, for the 120 man hours expended by 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 instant claim was filed December 23, 1985. In its defense of the claim, the Division Manager didn't dispute that non-employees had performed the work in question in the Agent's office at the Lake Forest depot. However, he did claim that the

entire depot was leased to the City of Lake Forest which was also, by the terms of the lease, responsible for its maintenance.

Additionally, it was later asserted by the Manager of Labor Relations that the City, not the Carrier, paid for and arranged for the work to be done and that the Carrier was unaware that the work was being done. Thus, the Carrier argues it could not be held responsible for the actions of a third party.

The record reflects that prior to the claim being appealed to the Board, the Organization asked for a copy of the lease between the Carrier and the City to be produced. Upon close examination, it is clear from the lease that the City is responsible for all the maintenance of the depot except the Agent's office. Thus, the Carrier cannot hide behind the lease argument.

The remaining defense is their assertion that they were not aware that the City was doing the work. Surely, there is no reason evidenced in this record to discredit this claim. Indeed this is sufficient under the facts of this particular case to

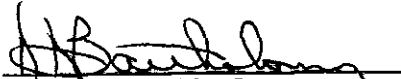
absolve the Carrier of responsibility in the performance of the scope related work in question.

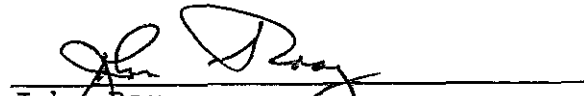
AWARD

The claim is denied.



Gil Vernon, Chairman


D. D. Bartholomay
Employee Member


John Raz
Carrier Member

Dated: 4-30-90