

PUBLIC LAW BOARD NO. 2960

AWARD NO. 175
CASE NO. 380

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 Agreement was violated when the Carrier assigned Signal Department employees rather than B&B employees J. D. Lange and G. LaPorte to build retaining walls along the right of way at Mile Post 42.7 during the week of April 30 through May 4, 1990 (Organization File 8KB-4611T; Carrier File 81-90-96).
- (2) As a consequence of the aforesaid violation, B&B Foreman J. D. Lange and B&B Carpenter G. LaPorte shall each receive eight (8) hours' pay at their respective straight time rate."

OPINION OF THE BOARD:

It is undisputed that during the week of April 30, 1990 to May 4, 1990, the Carrier's signalmen constructed a wooden retaining wall to support the ground fill upon which the supporting platform for the signal and battery box for Signal 387/394 (Mile Post 42.7) was to be constructed, a violation of rule 1 - Scope which states:

"RULE 1 - SCOPE

* * *

(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."

The organization argues that under this rule the construction of all structures are reserved to them. Rules 3 (g) and 3 (e) specifically reserve the work to the classifications of Foreman and Carpenter.

The Carrier argues that Rule 1 is general and does not specifically reserve the work in question to the BMWs. In contrast, the language of the Signalmen specifically reserves the following work to them:

"Installing foundations directly supporting signals or associated appurtenances.
Decking on signal bridges is not included herein."

Additionally, the Carrier argues that in the past both crafts have done such work.

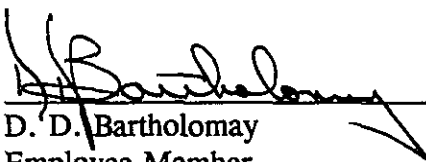
This is a case where the language in the contracts of two different crafts seems to grant the rights to the same work to both groups. It is noted, however, that as Rule 1 relates to this particular work, it is less specific than the Signalmen's Scope Rule. This fact, combined with a lack of exclusive history, custom, or practice, compels the Board to conclude that the claim cannot be sustained.

AWARD:

The claim is denied.

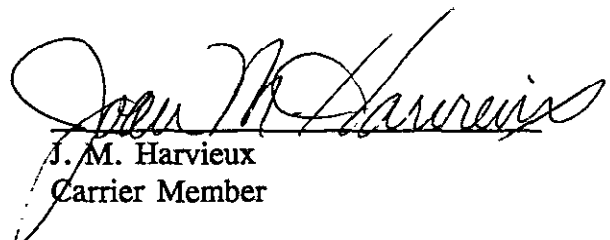


Gil Vernon, Chairman



D. D. Bartholomay
Employee Member

Dated: 11/9/93



J. M. Harvieux
Carrier Member