

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 14

Carrier File No. 4MWB 88-09-26

Organization File No. T-W 347

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it assigned outside forces to perform work constructing a track line change (clearing, grubbing and grading the right-of-way, installation of culverts, brush cutting and related work) between Mile Post 12.5 and Mile Post 19.4 near Boyleston, Wisconsin beginning on April 5, 1988 and continuing (System File T-W-347/4MWB 88-90-26).

As a consequence of the aforestated violation:

(a) Machine Operators M. F. Salzer, D. J. Mercier, G. E. Richards, D. Bertram, K.W. Olson, J. S. Peterson, D. W. Kolodzeske, G. W. Southworth, G. T. Ramsey, G. L. Eklund, R. A. Nikstad, R. L. Schauuff, R. L. Memmenga and K. R. Bertram shall each be allowed pay at their respective straight time rate, for an equal proportionate share of the four thousand two hundred eighty (4,280) man-hours consumed by the outside forces performing the machine operator work involved in the project referred to in Part (1) hereof, beginning on April 5 through and including June 2, 1988. In addition, the aforementioned Claimants shall each be allowed pay at their respective straight time rate, for an equal proportionate share of the total number of man-hours consumed by the outside forces performing

machine operator work in connection with the project referred to in Part (1) hereof, beginning on June 3, 1988 and continuing.

(b) Messrs. J. G. McMullen, J. J. Radakovich, J. K. Vendela, A. E. Hudacek, R. J. Lucas, J. A. Hanson, R. L. Bender, J. M. Lundgren, W. J. Bach, P. D. Paulson, J. A. Shober, J. A. Eyer and E. R. Schrader shall each be allowed pay at their respective straight time rates, for an equal proportionate share of the one thousand seven hundred eighty (1,780) manhours consumed by the outside forces performing the labor work involved in the project referred to in Part (1) hereof, beginning on April 5 through and including June 2, 1988. In addition, the aforementioned Claimants shall each be allowed pay at their respective straight time rate, for an equal proportionate share of the total number of manhours consumed by the outside forces performing labor work in connection with the project referred to in Part (1) hereof, beginning on June 3, 1988 and continuing.

F I N D I N G S

On February 12, 1988, the Carrier notified the General Chairman of the Carrier's intent to relocate and change its line of trackage over seven miles near Boyleston, Wisconsin. This was in connection with the Carrier's purchase of a segment of the Soo Line which was to be rebuilt, enabling the Carrier to operate over the former Soo Line trackage.

In the notice, the Carrier identified 17 phases of the work to be contracted to an outside firm and identified ten aspects of the project to be performed by the Carrier's Maintenance of Way employees.

A conference between the parties did not alter the Carrier's intentions. Thereafter, the Organization raised its claim to have all or most of the work performed by Maintenance of Way employees.

As in many other instances of this nature, the Organization relies in part on the Note to Rule 55, which states in pertinent part as follows:

The following is agreed to with respect to the contracting of construction, maintenance or repair work, or dismantling work customarily performed by employees in the Maintenance of Way and Structures Department.

Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department, including employees in former GN and SP&S Roadway Equipment Repair Shops and welding employees perform work in connection with the construction and maintenance or repairs of and in connection with the dismantling of tracks, structures or facilities located on the right of way and used in the operation of the Company in the performance of common carrier service, and work performed by employees of named Repair Shops.

By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employees described herein, may be let to contractors and be performed by contractors' force. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated

by the Agreement and beyond the capacity of the company's forces. . . .

Many if not all of the individual tasks involved in this type of construction are, as the Organization contends, customarily performed by Maintenance of Way employees. A review of the extensive claim handling record, however, demonstrates that projects of this magnitude have on numerous occasions been performed in whole or in part by outside forces. The Board finds that, in such projects, it is essential to review the overall nature of what is involved.

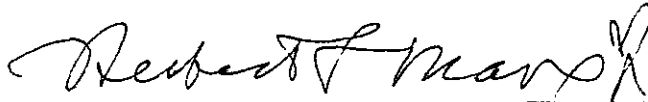
The Organization points out various aspects of the work which might be accomplished by Carrier forces through the use of Carrier equipment or equipment which might be rented for the purpose. Nevertheless, this is not sufficient to defeat the Carrier's contentions that the major track relocation project did involve, "special skills" (as to certain of the equipment, in particular) and "special equipment not owned" by the Carrier. In addition, the Carrier logically points to the necessity of completing the work by a November deadline.

Thus, the Organization has not established that projects such as involved here are "customarily performed" by Carrier forces. The Organization has proposed the possible use of certain Carrier equipment or indicated the feasibility of renting other equipment. Some of this is, however, conjecture,

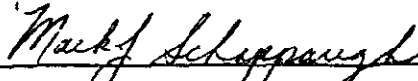
probably outside the realm of practical application. In sum, the Organization has not provided convincing proof as to the inapplicability of those circumstances provided in the Note to Rule 55 under which such work "may be let to contractors and be performed by contractors' forces".

A W A R D

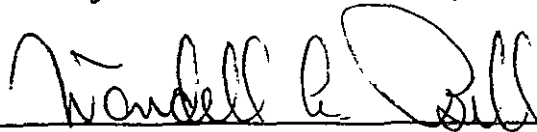
Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



WENDELL A. BELL, Carrier Member

NEW YORK, NY

DATED: 4/2/91