

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 21

Carrier File No. 4MWB 89-03-134E

Organization File No. T-M-641

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it assigned outside forces (Loram Maintenance of Way, Inc.) to perform ditch cleaning work on the track between Milbank and Mobridge, South Dakota, on October 12, 13, 14, 15, and 17, 1988 (System File T-M-644/4MWB 89-03-14E).

2. The Agreement was further violated when the Carrier failed to properly notify the General Chairman of its plans to contract out the work involved here, in accordance with the provisions of the Note to Rule 55 and the December 11, 1981 Letter of Agreement (Appendix Y).

3. As a consequence of Part 1 and/or 2 above, Group 1 Machine Operators M. L. Hutchinson, S. E. Edin, D. C. Bona and K. D. Rasmussen shall each be allowed thirty-two (32) hours pay at their respective straight time rates and sixteen (16) hours pay at their respective time and one-half rates.

FINDINGS

This dispute is another in a series concerning the application of the Note to Rule 55 as to the notice provision thereof and the

question of the Carrier's right to contract work. These disputes have been reviewed by the Board, and much of the parties' basic arguments and the Board's findings thereon are incorporated herein by reference. See Award Nos. 1 and 14, among others.

Of particular relevance here is that portion of Rule 55 reading as follows:

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' forces. 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. . . .

In this instance, the System Chief Engineer notified General Chairmen on December 21, 1987 of its intention to contract special ditching equipment from the Loram Company for use on a system-wide basis. In response to an Organization request, a conference on the matter was held by telephone on February 12, 1988. Thereafter, the Carrier proceeded with the project, despite no agreement from the Organization.

The Board finds that the Carrier fulfilled the requirement of the Note to Rule 55 as to notification. The fact that the

particular instance of ditching work here under review was not specifically listed is not found of consequence.

On the property, the Carrier offered the following explanation of its decision to contract the work:

As was pointed out during the conference, the Carrier has looked at the various types of equipment available to perform this work. We have found that the equipment we have contracted is the very best available, all things considered. Although there [are] other types available, they do not perform to our satisfaction and do not meet our requirements. The machinery required to perform this work is not owned by the Carrier and is not available to the Carrier for operation by Carrier forces.

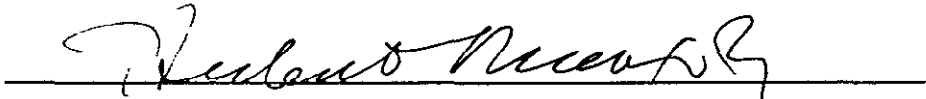
Loram has indicated that they would not lease the Ditch Cleaner to the Carrier without their own operators. They want to operate this very complex, high production equipment and to maintain standards of performance and protect their investment. At present there are only two machines of this type in the U.S. that meet BN requirements. Rather than just plow away material, it actually removes material without fouling the track structure and builds a new ditch. The machine establishes a ditch profile with a smooth bottom which provides for the efficient runoff of storm drainage. Much of the work that this machine performs has simply not been done in the past because of the difficulty and expense of using more conventional equipment in these areas. It has the capability of handling air dump cars to deposit material in.

The board concludes that this complies with the portion of the Note to Rule 55 concerning "special equipment not owned by the Company". The record indicates that the Carrier attempted to lease the equipment for use by its own employees, without avail. It is clearly the case that Carrier employees do perform ditching work.

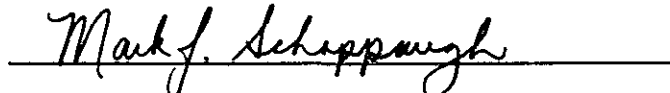
Here, however, the Carrier has demonstrated that the capability of the Loram equipment is substantially greater than that which can otherwise be achieved. The Note to Rule 55 specifically covers such situation.

A W A R D

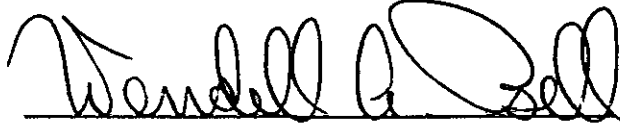
Claim denied.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



WENDELL A. BELL, Carrier Member

NEW YORK, NY

DATED: 11-21-91