

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 35

Carrier File No. 1MWB 89-06-19

Organization File No. S-P-417

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it assigned or otherwise allowed outside forces (Big Horn Rock Crushing Company) to load crushed rock into Carrier owned rail cars at Cactus Pit, between Connell and Pasco, Washington on the East Portland Seniority District, beginning on March 13, 1989 and continuing.

2. The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plans to contract out the above work, as required by the Note to Rule 55 and Appendix Y.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Group 2 Machine Operations J. H. Munoz and R. J. Greateon shall each be allowed "straight time and overtime pay equivalent to the hours worked by contractor forces loading crushed rock at Cactus Pit," beginning March 13, 1989 and continuing.

F I N D I N G S

For many years the Carrier held lease rights from the State of Washington to extract and remove aggregate materials from the Cactus Pit, located between Connell and Pasco, Washington. The

rock removed from Cactus Pit was loaded onto Carrier-owned rail cars by Maintenance of Way machine operator forces.

The claim concerns a change in this procedure in that employees of an outside concern, Big Horn Rock Crushing Company, were assigned the work of loading material from Cactus Pit on Carrier rail cars. The Organization contends that the rules concerning use of outside forces apply here, that no notice of the change was provided to the Organization, and that affected employees should receive appropriate compensation.

The record demonstrates, however, that a fundamental change occurred in 1988 affecting the corporate structure of the holding company controlling the Carrier and other non-railroad subsidiaries. As a result, a new corporation, Burlington Resources, Inc. was formed. Among its subsidiaries is Meridian Aggregates Company. Meridian, in turn, acquired the leasing rights for Cactus Pit from the State of Washington. At some point, Meridian, holding no contractual relationship with the Organization, determined to have the material loaded on freight cars by Big Horn.

When the Organization raised its claim, the Carrier provided information concerning Meridian, including the cover sheet of the lease between Meridian and the State of Washington and offering to provide access to the full lease.

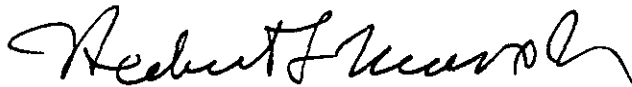
The Board need not assume the guise of corporate financial expertise to perceive that the Carrier is no longer involved in any

way with the Cactus Pit operation. The on-site loading of freight cars by outside suppliers is recognized and accepted.

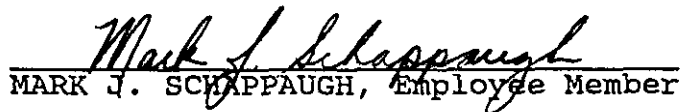
The Board has reviewed the many awards provided by the parties concerning similar situations. From these, the Board does not determine that rule violation has occurred in this instance. The work involved is not directly railroad work; it is, rather, the loading of purchased material. The work involved did not occur on Carrier property. The major corporate structure cannot be viewed as an deliberate attempt to have Carrier work performed by outside forces. Given the particular facts herein, there is no basis for application of the Note to Rule 55 or Appendix Y.

A W A R D

Claim denied.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: February 19, 1993