

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 71

Carrier File No. 7MWA 92-6-25

Organization File No. C-92-C100-29

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier assigned outside forces to perform work constructing an extension of main double track (dirt work, culvert extensions, construction of two railroad bridges) between Walker and Bill, Wyoming beginning on January 12, 1992 and continuing.

2. As a consequence of the aforestated violation:  
(a) Machine Operators S. L. Scholfeld, R. W. Hetherington, B. D. Hirschert, K. P. Wittmus, T. L. Jackson, J. W. Cornell, R. L. Neverve, J. G. Long, J. W. Bates, T. E. Dowell, C. R. Kelly, A. D. Anderson and D. L. McKeon shall each be allowed pay at their respective straight time and overtime rates, for an equal proportionate share of the total man-hours (straight-time and overtime) consumed by the outside forces performing the machine operator work involved in the dirt work project referred to in Part (1) hereof, beginning on January 12, 1992 and continuing. (b) Messrs. S. L. Talbot, K. N. Wright, M. C. Rose, R. R. Martinez, D. L. Johnson, S. T. Bennett, B. N. Welte, S. L. Bickford, C. E. Bluye, D. J. Ashmore, L. D. Welte, J. R. Branson, R. G. Seegrist, C. J. Welte, Jr., T. W. Lewis and B. D. Deuel shall each be allowed pay at their respective straight time and overtime rates, for an equal proportionate share of total man-hours (straight time and overtime) consumed by the outside forces performing the Bridge and Building Subdepartment work involved in the bridge and culvert extension work referred to in Part (1) hereof beginning on January 12, 1992 and continuing.

FINDINGS

The Carrier notified the General Chairman as follows:

As information, the Carrier intends to construct a new second main track between the existing sidings of Walker and Bill on joint-line trackage in Wyoming. It is intended that bids be invited for the general contracting of this work about Oct. 7, 1991, awarding a general contract to cover work including grading, constructing of a new bridge over State Highway 59 and a new bridge over County Road 32, constructing of new track, and related items, no later than Nov. 15, 1991 in order to expedite bridge construction for completion no later than July 31, 1992. Construction of subgrade, including subballast, is to be completed ready for tracklaying by July 3, 1992. The length of the project is approximately 9.2 miles.

Projects of this magnitude have been customarily performed by outside contract forces. The Company possesses neither the specialized equipment nor the special skills required, nor is the Company adequately equipped to handle the work and to complete the new construction within the allotted time period.

Following conferences on the matter, the Carrier proceeded with the contracting of the project, resulting in the claim before the Board.

As emphasized by the Carrier, the Board reviewed a similar major new track construction project in Award 14. That Award concerned the relocation of seven miles of track. Award 14, making reference to the Note to Rule 55, stated in pertinent part as follows:

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 location project did involve "special skills" (as to certain of the equipment, in particular) and "special equipment not owned" by the Carrier. . . .

Thus, the Organization has not established that projects such as involved here are "customarily performed" by Carrier forces. . . . 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".

In this instance, the Organization has provided additional evidence in support of its view that work of this nature can and should be performed by Carrier forces. After full review, the Board nevertheless determines that this major new track construction project comports with the conclusion, quoted above, reached in Award 14. There is no convincing basis for the Board to determine otherwise in this instance.

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: April 18, 1995