

PUBLIC LAW BOARD NO. 2960

PARTIES Brotherhood of Maintenance of Way Employees  
TO and  
DISPUTE: Chicago and North Western Transportation Co.

STATEMENT OF CLAIM:

(1) Claim filed in behalf of Messrs. C. L. Porter, J. C. Anderson R. R. Scarberry. D. G. Givens and M. J. Snyder for an equal and proportionate share of 225 hours straight time, and 111 hours of overtime service rendered by the Iowa Division 703 Surfacing Gang (Case No. 183).

(2) Claim filed in behalf of Messrs. R. R. Noel, S. A. Broderson, A. D. Charles, W. K. Prusha and S. R. Bockert for all hours of service rendered by the Iowa Division BUC Gang on the Central Division (Case No. 184).

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The Claimants, who hold seniority on the Central Division, were employed on the claim dates when the Carrier assigned employees from the Iowa Division to work on the Central Division.

Before the Board, the Carrier argued that Rule 11 (b) was applicable. However, that position was not raised during the handling on the property and will not be considered here.

Based on the record, as it is properly before us, the issue raised by the instant cases are identical in all essential respects to those presented in Award 82 of PLB 1844.

There is no reason to alter the result here either. The Carrier argued that the Claimants lost no work opportunities since if the work had not been performed by the Iowa Division crews, it would not have been performed by the Central Division crews either. This relates to a deadline in which the work of all gangs had to be completed. The Claimants were employed up to this deadline. Therefore, they were fully employed, it is argued.

The Carrier's argument suggests there was some kind of emergency or urgency which would justify ignoring the seniority of the Claimants. However, the Organization argued without rebuttal on the property that the deadline was self-imposed and that, in fact, weather conditions would have permitted the Central Division gangs to have accomplished the work in question. The fact this wasn't refuted strongly leads the Board to the conclusion that there was no legitimate business reason for not affording the work opportunities in question to the rightful employees.

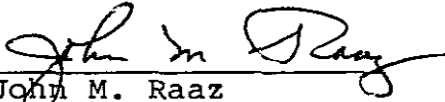
In view of the foregoing, the claims are sustained.

AWARD:

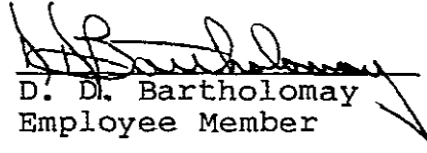
The Claim is sustained.



Gil Vernon, Chairman



John M. Raaz  
Carrier Member



D. D. Bartholomay  
Employee Member

Dated:

Nov. 1, 1989