

PUBLIC LAW BOARD NO. 2960.

AWARD NO. 139
CASE NO. 203

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees
and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Claim filed in behalf of Messrs. D. J. Rife, M. G. Blackely, R. G. Haner and J. D. Isbell, due to the Carrier contracting out Maintenance of Way work.
- (2) Claim filed in behalf of Messrs. J. L. Koeppen, M. D. Davis, M. H. Vanderah, R. L. Upah, A. C. Thompson and T. L. Gardner, due to the Carrier contracting out Maintenance of Way work.
- (3) Claim filed in behalf of Messrs. R. A. Walker, R. D. McDuffee and D. J. Meyer, due to the Carrier contracting out Maintenance of Way work.

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.

Two of the claims before the Board involve Missouri Valley, Iowa and the other involves Grinnell, Iowa. At Missouri Valley the Carrier had abandoned the grade crossing at Sixth Street. The Carrier used its forces to remove the 3 tracks intersecting Sixth Street. After this was accomplished

the Carrier contracted with an outside concern to pave over the former grade crossing. At Grinnell, the Carrier's forces upgraded a crossing but the Carrier used outside forces to pave the sidewalk and public road approaches leading to the crossing.

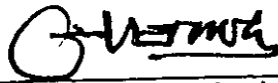
It is the opinion of the Board that, for different reasons, the claims cannot be sustained. First, with respect to the Missouri Valley project, we note the Scope Rule reserves work, in connection with tracks, etc. "used in the operation of the Company in the performance of common Carrier service on the operating property". After the tracks were removed by Carrier forces any work at the crossing could not reasonably have been considered to be done in connection with track or facilities used in the operation of common Carrier service.

As for the Grinnell project, we are not convinced that Rule 1 specifically reserves the paving of sidewalks and street approaches to active crossings to Carrier forces. It is arguable whether these duties are directly related to the "performance of common Carrier service". In short, the language in this respect is ambiguous and to establish that the work was reserved to the Claimants the Organization would have to put forth convincing evidence of a customary past practice. We are not convinced on the basis of this record that such work is reserved to them by custom or practice.

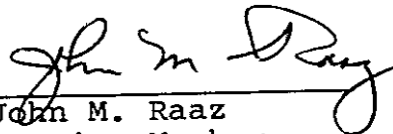
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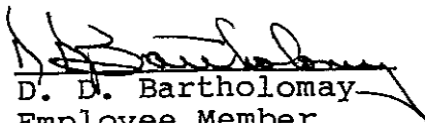
The claim is denied.



Gil Vernon, Chairman



John M. Raaz
Carrier Member



D. D. Bartholomay
Employee Member

Dated: Nov. 1, 1989