PUBLIC LAW BOARD NO. 2960

AWARD NO. 142
CASE NO. 204

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employes

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the outside forces were used to remove ballast and dirt from the Barrington, Illinois platform and Lake Cook Road crossing.

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plans to assign said work to outside forces.

(3) Because of (1) and/or (2) above, Claimant J. R. Wyse forty (40) hours at the straight time rate and sixty-five (65) hours at the time and one-half rate; Claimant J. O. Landvick thirty-three (33) hours at the time and one half rate; Claimant R. Roewer eight (8) hours at the straight time rate and thirteen (13) hours at the time and one half rate; Claimant V. C. Aguilar eight (8) hours at the straight time rate and three and one half (3.5) hours at the time and one half rate; and Claimant Z. V. Galvan eight (8) hours and the straight time rate and three and one-half (3.5) hours at the time and one-half rate.

OPINION OF THE BOARD:

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

The work in question involved the removal of ballast and dirt from the Barrington, Illinois platform and Lake Cook Road crossing. There is no dispute that from October 5 to October 22, 1985 the Carrier used McKay Contractors, Inc., and Peter J. O'Brien and Company to perform the work in question. It is undisputed that the Carrier failed to give advance notice prior to this sub-contracting. As for the necessity of the contracting the Carrier contends that it could not procure the equipment on a rental basis. Nor could they, it is asserted, obtain necessary disposal permits.

There are two problems with the Carrier's case. First of all, their failure to give notice is indefensible. Second, their justification for the subcontracting is bare assertion. We don't disagree that, if true, the reasons given by the Carrier would justify the contracting out. However, simple assertions are insufficient to convince us.

The irony of this case is that had the Carrier given advance written notice of the subcontracting along with the reasons for the subcontracting and explained their position at a conference, a sufficient record to sustain their position might have been made. The importance and necessity of advance notice cannot be stressed enough. The best opportunity for resolution of subcontracting disputes is at this conference. It is much easier to resolve differences and, if not, make a record on a local face-to-face basis rather than later merely firing assertions back and forth in letters, only to dump the mess in the Board's lap. Not to have a conference is simply

counter-productive in every sense and inconsistent with the tenor of the December 11, 1981 letter of understanding which stated in relevant part:

> "The Carriers assure you that they will assert good-faith efforts to reduce the incidence of subcontracting and increase the use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by Carrier employees.
>
> "The Parties jointly reaffirm the intent of Article IV of the May 17, 1968 Agreement that advance notice requirements be strictly adhered to and encourage the Parties locally to take advantage of the good-faith discussions provided for to reconcile any differences. In the interests of improving communications between the Parties on subcontracting, the advance notices shall identify the work to be contracted and the reasons therefor." (emphasis added)

In summary, the contract was violated when the Carrier failed to give advance notice and failed to prove on the property the necessity of subcontracting. As a remedy, in this particular case, the Claimants are entitled to be paid at the overtime rate for the overtime hours expended by the contractor. The Organization has failed to convince the Board that there was a loss of work opportunities beyond this extent.

AWARD:

The claim is sustained to the extent indicated.

Gil Vernon, Chairman

John M. Raaz
Carrier Member

D. D. Bartholomay
Employee Member

Dated: Nov. 1, 1989