

PUBLIC LAW BOARD NO. 2960

AWARD NO. 144  
CASE NO. 190

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) The Carrier violated the Agreement when outside forces were used to hang sheet rock, tape and texture joints, paint interior walls, install carpeting and curtains, install rain gutters, downspouts, inspecting and adjusting the windows, frames and locks in the Customer Services Center in Cedar Rapids, Iowa on different dates in January, February and March of 1985.

(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, Claimants B. A. Thiesse, T. S. Campbell, L. A. Graham, J. J. Simmons, W. J. Kress, J. Marshall and D. D. Hollingsworth shall be allowed an equal and proportionate share of the 672 hours expended by the outside contractor.

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.

On July 5, 1984, the Carrier sent the General Chairman a subcontracting notice concerning a new building to be built at

Fourth Street Corridor N.E. in Cedar Rapids, Iowa. The notice read as follows:

"Please accept this as notice under Rule 1(b) of the BMW Agreement that the Carrier intends to contract out the following work in connection with the construction of a 28 foot wide by 90 feet long pre-engineered metal building as a Yard Office at Cedar Rapids, Iowa. Construction of this Building will necessitate the utilization of outside contractors as listed below:

- "1. Construction of the building complex.
- "2. Construction of interior partitions including plumbing, heating, ventilating and electrical systems.

"Completion of this project will require that C&NW employees perform the following work:

- "1. Remove four switches and approximately 2,100 linear feet of track.
- "2. Build water and sewer lines to the building site.
- "3. Do all decorating, including interior and exterior painting.
- "4. Install necessary record storage shelves, cabinets, etc. and relocate furniture and office equipment from leased facility.

"As the construction of this building involves a pre-engineered metal facility, along with the necessary plumbing, heating, ventilating and electrical service, it will be necessary to utilize the services of a contractor for construction of this building. The C&NW does not possess the necessary equipment nor skilled supervisory employees with the expertise for construction of this facility and is therefore necessary that the work be performed by a contractor and as such this work falls within the exceptions in Rule (b)."

As it turned out, the Carrier could not get the necessary permits to construct a new building at this site. As an alternative, the Carrier purchased an existing building and

remodeled it with Carrier forces. The Carrier also constructed another new building at 4900 Edgewood Road S.W. in Cedar Rapids. No notice was given.

The instant Claim was then filed contending that a separate notice was required and that existing forces could have done the remodeling work. The Claim also noted that the Carrier's forces did not participate in any way with the construction of this building. The Carrier takes the position that the original notice satisfied the requirements of the Agreement. They contend that it was reasonable for them to conclude there would be no objection to the final project since there was no objection to the initial project.


Even though we accept the validity of the Carrier's argument that the original notice of new construction for the 4th Street location was sufficient for the purposes of the Edgewood Road location, the Board still believes the Claim must be sustained. The original notice stated that Carrier forces would be used to perform certain types of work in connection with the new construction, yet the Carrier ultimately failed to allow the Carrier forces to do any of the work at the Edgewood location. Having granted the Employees a portion of the work originally and then depriving them of this work was definitely inappropriate.

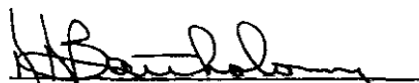
The original notice set forth areas of work to be performed. However, the ultimate project did not involve the removal of any track or switches. As for the other work, the Claimants are

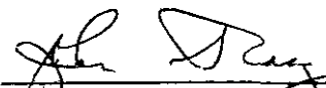
entitled to a proportionate amount of this work. The Board believes this to be 36 hours per Claimant at the straight time rate of pay.

AWARD

The Claim is sustained to the extent indicated in the Opinion.

  
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Gil Vernon, Chairman

  
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D. D. Bartholomay  
Employee Member

  
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John Raz  
Carrier Member

Dated: 4-30-90