

PUBLIC LAW BOARD NO. 2960

AWARD NO. 150
CASE NO. 216

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 it contracted with an outside concern to reroof the roundhouse and the B&B Carshop Building at Chadron, Nebraska (Organization File 6LF-2150 T: Carrier File 81-87-8).
- "2. The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its intent to assign said work to outside forces.
- "3. Because of (1) and/or (2) above the Claimants D. J. Brech, D. V. Wood, S. D. Connors, R. G. Hanson, G. R. Crile, D. E. Grant, D. L. Sutton and T. R. Schave shall each be compensated, at their respective rates of pay, an equal and proportionate share of the 784 man hours expended by the 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 June 30, 1986, a hail storm occurred at Chadron, Nebraska causing damage to the flat roofs on the roundhouse and the Car

Department buildings at that location. The Carrier then contracted -- without notice to the General Chairman -- with a roofing company to install a new roof. The contractor did not begin the project until 35 days after the storm. In the meantime, the B&B employees performed temporary repairs. Subsequently, the instant claim was filed.

At the outset, it must be stated that the Carrier's failure to provide notice cannot, by any stretch of the imagination, be justified on an emergency basis. The delay in the project speaks for itself. Nor can the lack of notice be justified based on the basis of a local understanding. The agreement clearly requires notice to the General Chairman.

While the notice requirement in the agreement was violated, the Board is not entitled to affix a penalty or punitive damages. Whether there is a monetary penalty depends ultimately whether the subcontracting fits the agreement criteria and if it did not, whether the Claimants lost any work opportunities.

It is the conclusion of the Board that the particular project in question falls under the special skills criteria. Initially, the vice chairman contended that no special skills were required. More specifically, it was asserted that the job was a rather ordinary roofing job of removing old roofing and installing new felt, rolled roofing and sealing seams and joints with hot tar. If this were the case, we would agree it probably was roofing work ordinarily performed by and within the skills of, the B&B employees. However, without any meaningful rebuttal,

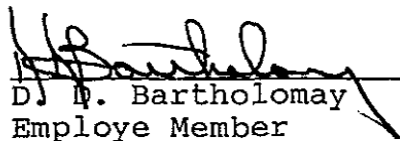
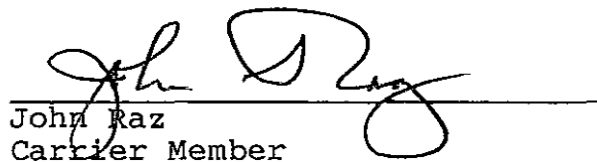
the Carrier asserts that the job in question involved a special roof membrane for which the B&B doesn't have the skill and equipment to apply. This is supported too by an assertion that similar projects were accomplished in the past without objections by the Organization.

AWARD

The claim is denied.



Gil Vernon, Chairman


D. B. Bartholomay
Employee Member
John Raz
Carrier Member

Dated: 4-30-90