

PUBLIC LAW BOARD NO. 2960

AWARD NO. **151**
CASE NO. 208

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 on February 6, 1986, it contracted with or otherwise allowed an outside concern to replace the door on the Ticket Agent's Office at the Lake Forest Depot. (Organization File 9KB-4175 T; Carrier File 81-86-63)
- "2. The Carrier violated the Agreement when on February 18, 19, 20, 21, 24, 25, 27 and 28, 1986, it contracted with or otherwise allowed an outside concern to stain, paint and perform carpenter's work in the Ticket Agent's Office at the Lake Forest Depot. (Organization File 9KB-4182 T; Carrier File 81-86-83)
- "3. Claimants R. J. Jahnke, R. Loeffler and G. Galich shall each be allowed an equal proportionate share at their respective rates of pay for the sixteen hours expended by the outside concern on February 6, 1986.
- "4. Claimants R. J. Jahnke, R. Cizek and R. Loeffler shall each be allowed an equal and proportionate share at their respective rates of pay for the 32.5 hours expended by the outside concern on February 18, 19, 20, 21, 24, 25, 27 and 28, 1989."

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.

There are two claims before the Board in this case. The first which relates to February 6 was filed February 24, and the second, which relates to February 18 was filed April 1, 1986.


The arguments presented here are the same as those set forth in Case No. 206 of this Board. There the Board absolved the Carrier of responsibility for having outside employees perform B&B duties in the agent's office since it was unaware of its occurrence. This was in spite of the fact that under the relevant lease the Carrier retained control and responsibility for maintenance in the agent's office.

The Board can buy this excuse once, but not a second time. The original claim, which is the subject of Case 206, was filed December 23, 1985. The incidents covered by these claims occurred roughly six weeks later. It seems reasonable that after having been put on notice in December that the City of Lake Forest was performing work in the agent's office -- again which was under the control of the Carrier and a fact that should have been known to them -- the Carrier was at least obligated to take some affirmative action with the City to protect the Organization's right to the work. They simply should have gone to the City and told them "hey, we are responsible for the agent's office and you just can't come in here unannounced and do work on your own initiative." The fact they did not is enough to hold them responsible under the unique circumstances of this case for the

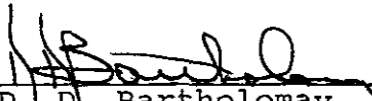
infringement of outside employees upon the scope of the work reserved to the employees under Rule 1.

AWARD

The claim is sustained.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



John Raz
Carrier Member

Dated: 4-30-90