

PUBLIC LAW BOARD NO. 2960

AWARD NO. ~~138~~ 153
CASE NO. 217

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 assigned the Lytrel Construction Company to dismantle structures commonly identified as the Western Division Headquarters and the Western Division Engineering Department located in Chadron, Nebraska (Organization File 6LF-2153 T; Carrier File 81-87-10).
- "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, Claimants D.V. Wood, S.D. Connors, R.G. Hanson and J.M. Goldrick shall each be allowed fifty six hours compensation at the applicable straight time rate for the positions held on the claim dates."

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.

The basic facts are not disputed. The Carrier employed, without notice to the Organization, the Lytrel Company to

dismantle the old division headquarters at Chadron, Nebraska. It is also not disputed that the Lytrel Company was assisted by four Carrier employees. This Carrier crew consisted of three B & B employees and a machine operator - Mr. R.G. Hanson, one of the Claimants. They used some of the Carrier's equipment, namely a "little giant" crane and a 10-yard dump truck.

When confronted with the claim, the Carrier defended its action of hiring Lytrel because the Carrier did not have the necessary equipment to perform the work. The problem with this defense is bi-fold. First, the Carrier never explained why this equipment was necessary. For instance, it never responded to the General Chairman's contention that the job could have been done with the Carrier's equipment. This contention was set forth in his January 13, 1987 letter as follows:

"The structure housing the offices of the Western Division Headquarters and Western Division Engineering Department was replaced by a new facility and the Carrier should have known well in advance of their intent to dismantle the building, therefore, this was not an emergency and it is my understanding that there was no time limits for the building to be dismantled and accordingly, the Carrier could have accomplished the same duties by utilizing their employees and equipment."

The second, and more problematic aspect of the Carrier's case is -- even assuming that their equipment was not adequate -- that they have not demonstrated that they made a good faith effort to procure the necessary equipment on a rental basis. This obligation is set forth in the December 11, 1981 letter of

understanding between the National Railway Labor Conference and the B.M.W.E. International President. It states in relevant part:

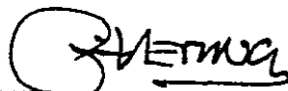
"The carriers assure you that they will assert good-faith efforts to reduce the incidents of subcontracting and increase the use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by carrier employees."

A good faith effort, at a minimum, would require the Carrier to check the availability of such equipment to compare the cost of utilizing it with Carrier forces to the cost of a contractor and to make a rational assessment of these and other relevant factors. It is also noted that the Carrier would have had the opportunity to communicate such consideration in its advance notice had they given one.


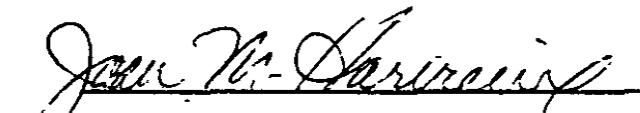
In view of the fact that the Carrier did not demonstrate the requisite good faith consideration to utilizing rental equipment, the claim must be sustained.

AWARD

The Claim must be sustained.



Gil Vernon, Chairman


D. D. Bartholomay
Employee Member
Carrier member

Dated: 6/13/90