

**PUBLIC LAW BOARD NO. 2960**

AWARD NO. ~~100~~ 163  
CASE NOS. 257 AND 258

**PARTIES TO DISPUTE:**

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it utilized an outside contractor to plow, load and haul snow at Global 1 on December 15, 1987 (Organization File 3KB-4374 T; Carrier File 81-88-29).
- (2) The Carrier violated the Agreement when it utilized an outside contractor to plow, load and haul snow at Global 1 on December 17, 1987 (Organization File 3KB-4373 T; Carrier File 81-88-32).
- (3) The Carrier further violated the Agreement when it did not give the General Chairman advance notice of its intent to contract this work in either claim.
- (4) Because of the violation identified in Part 1, the nine senior furloughed employees on Seniority District T-9 shall be compensated an equal and proportionate share of the 274.5 man hours expended by the contractors employees, and, because of the violation identified in Part 2, the six senior furloughed employees on Seniority District T-9 shall be compensated an equal and proportionate share of the 72 man hours expended by the contractors' employees."

**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 the claim dates, the Carrier hired an outside contractor (employees and equipment) to assist it in removing snow dumped upon the Chicago area by a significant storm. The contractor's nine employees used three semi-dump trucks, three 6-wheel dump trucks, two payloaders, and one Bobcat.

The Carrier contends it is relieved of its responsibility to use its own forces because they lacked sufficient equipment and the emergency conditions precluded renting equipment for use by furloughed employees. The Organization contends that the Carrier should prearrange equipment for such situations, just as they prearranged the contractor in this case.

The Carrier is committed to make a good faith attempt to procure rental equipment for use by its own employees. In this case, while there was no overt attempt to do so, the obvious impracticalities of doing so under these circumstances excuses the Carrier's failure to do so.

It is quite doubtful that dump trucks and pay loaders are as easy to procure as a truck at the local U-Haul. It is also unlikely that owners of such equipment would be willing to make it available to the Carrier strictly on a contingency basis in the event of a snowstorm. More than likely it would be first-come, first-served. Thus, it would be difficult to prearrange. Accordingly, it is reasonable to presume that if the Carrier was to rent equipment under these circumstances, they would have to call with the advent of a storm. It is also unlikely that one single source would have all the equipment they needed. They then

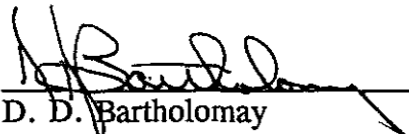
might be forced to locate several sources of equipment, as well as call all the necessary employees, which might require multiple calls depending on who was available. Meantime, while the Carrier is taking all the time to track down equipment and manpower, the emergency snow condition continues unabated.

In sum, under the unique emergency circumstances of this case, it was impractical/impossible to comply with the Agreement.

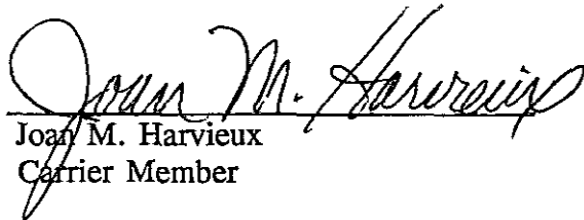
**AWARD:**



Gil Vernon, Chairman



D. D. Bartholomay  
Employee Member



Joan M. Harvieux  
Carrier Member

Dated: 7-25-91