

PUBLIC LAW BOARD NO. 2960

AWARD NO. 179
CASE NO. 440

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 Agreement was violated when the Carrier assigned outside forces to remove and replace three of five roofs at the M19A Shops beginning November 12, 1990 up to and including December 14, 1990 (Organization File 9KB-4704T; Carrier File 81-91-48).
- (2) The Agreement was violated when the Carrier assigned outside forces to remove and replace the roof of the main building at the California Avenue Coach Yard beginning October 17, 1990 and continuing (Organization File 9KB-4705T; Carrier File 81-91-49).
- (3) The Agreement was violated when the Carrier assigned outside forces to remove and replace two of five roofs at the M19A Shops beginning February 25, 1991 up to and including April 11, 1991 (Organization File 9KB-4733T; Carrier File 81-91-123).
- (4) As a consequence of the violation referred to in Part (1), B&B Foreman M. Stauss, Assistant B&B Foremen W. Lindsey and F. March, Carpenters T. Keys, J. Slivka, J. Martinez, M. McCarthy and Machine Operator A. Alexander shall each be allowed an equal proportional share of the 1,400 man-hours expended by the contractor for their loss of work opportunity.
- (5) As a consequence of the violation referred to in Part (2), B&B Forces headquartered at California Avenue Coach Yards during the claim period shall each be compensated an equal proportionate share of all man-hours expended by the contractors for their loss of work opportunity.
- (6) As a consequence of the violation referred to in Part (3), B&B Foreman M. Stauss, Assistant B&B Foremen R. Wagner and F. March, Carpenters T. Keys, R. Robinson,

S. Wyse, M. Waller and Machine Operator A. Alexander shall each be allowed an equal proportionate share of the 1,992 man-hours expended by the contractor for their loss of work opportunity."

OPINION OF THE BOARD:

On August 9, 1989, the following notice of intent to contract-out was sent to the General Chairman:

"Please accept this as notice under Rule 1(b) of the BMW E Agreement of the Carrier's intention to contract out certain work in connection with the replacement of the roofs on the California Avenue and M19-A facilities. We have been advised by the Suburban Division that the work which will consist of the replacing of the existing roofs with a modified bitumen single ply living-membrane roofing system will be performed by a contractor since this work requires a special expertise of installation and is work that has never been performed by our crews. This work also must be done by a licensed installer in order that the guarantee will be effective. However BMW E forces will be used on any post-installation roof maintenance/ repair work other than that covered by the warranty. This work will begin on or shortly after September 1, 1989.

"This work falls under the exceptions of Rule 1(b) and is to be performed by the contractor."

The Parties met several times in an attempt to reach an agreement on the notice; however, they were unsuccessful. The Carrier proceeded with the subcontracting, and the instant claims were filed.

After reviewing the evidence and the arguments of the Parties, the Board must conclude that, under these particular circumstances, the Carrier has justified the use of outside forces. A combination of several factors led to this conclusion, the foremost of which the job involved the use of special material which the provider would not warrant if installed by the Carrier forces.

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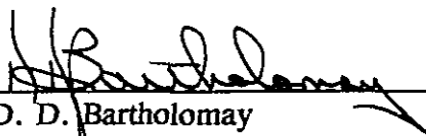
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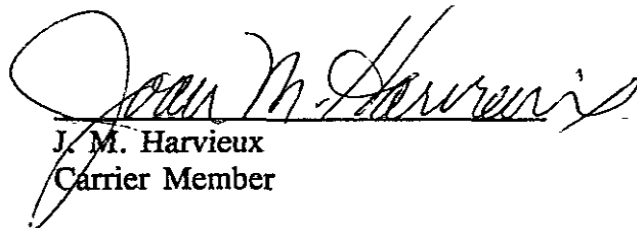
In view of the foregoing, the claim must be denied.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



J. M. Harvieux
Carrier Member

Dated: 11/9/93