

PUBLIC LAW BOARD NO. 2960

AWARD NO. 180
CASE NO. 444

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 forced to apply blacktop to the Epworth Road crossing, Belvidere Subdivision on August 30, 1991 (Organization File 3KB-4858T); Carrier File 81-92-11).
- (2) As a consequence of the violation referred to in Part (1), Section Foreman g. Largent, Construction Gang Foreman S. Schauff and Assistant Foreman T. Beveroth shall each be paid eight hours at their respective straight time rate of pay."

OPINION OF THE BOARD:

On March 19, 1991, the Carrier served a notice under Rule 1(b) to the Organization advising it of its intention to use contractors to perform the work of laying and paving asphalt at approximately 240 locations, including the crossing involved in this claim. The notice read in pertinent part as follows:

"Please accept this as the Carrier's notice required under Rule 1B of the BMWE Agreement of our intention to subcontract certain work in connection with crossing renewal projects.

"Specifically, the Carrier intends to use contractors to perform asphalt paving in connection with crossing rehabilitation projects. Crossing renewals are being performed in conjunction with state highway departments along with projects of various cities and counties. The work to be performed by a contractor involves the laying and paving of asphalt at the crossing locations that intersect with the various streets, highways, etc. We will also require at some locations to have the contractor use concrete saws, concrete breakers, and vibratory rollers in order to handle the work that the Transportation

Company is not experienced in and does not have the equipment. Chicago and North Western forces will perform all work related to the track rehabilitations, such as surfacing and placing of the flange rails. In most cases the work will be performed at the direction and in some cases at the cost of outside agencies.

"The Transportation Company does not own the asphalt pavers necessary to perform the paving work nor does it own blacktop rollers normally used for paving projects. In addition we do not own concrete saws, concrete breakers, and vibratory rollers. In addition, the North Western Transportation Company has not historically performed paving work at crossings.

"Attached is a list of the crossings which the Engineering Department anticipates renewing during the 1991 construction season.

"For the reasons given herein, the work to be performed by the contractor meets the exceptions listed in the BMWV Scope Rule.

The Parties met and could not agree on the use of outside forces. The contracting-out proceeded, and a number of claims were submitted including this one.

It is the conclusion of the Board that the use of contractors in this case was justified on the basis of lack of equipment. Given the magnitude of crossings and their geographic diversity, it would be impractical, if not impossible to rent the paving equipment necessary to accomplish the jobs in question.

AWARD:

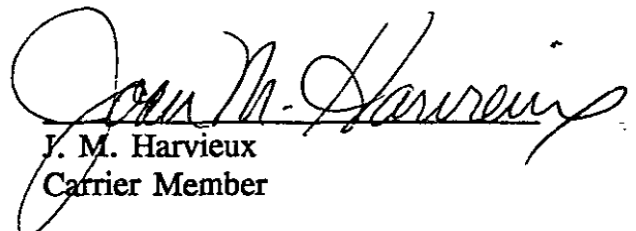
The claims must be denied.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member I dissent



J. M. Harvieux
Carrier Member

Dated: 11/9/93