

PUBLIC LAW BOARD NO. 2960

PARTIES Brotherhood of Maintenance of Way Employees

TO and

DISPUTE 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 an outside contractor to dismantle track commonly referred to as the Yard 1 Run Around, 2 Medusa Leads and Tracks 1 and 10 East in the Piggy Back Yard in Proviso, Illinois commencing on June 15, 1989 (Organization's File 9KB-4504T; Carrier's File 81-89-137).
2. The Carrier also violated Rule 1 when it failed to notify the General Chairman of its intent to contract said work.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, the senior foreman and two senior common machine operators in Seniority District T-9 shall each be compensated at their respective rates of pay for an equal proportionate share of the man-hours expended by the contractor forces commencing June 15, 1989 and continuing until such time the violation ceases to exist."

FINDINGS: This Board, upon the whole record and all of the evidence, finds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

OPINION OF THE BOARD:

The Parties in the submissions suggested that this case was identical to Case 296, Award 172. Indeed, both involved the dismantling of track by an outside concern to whom the Carrier alleged that it had sold the track on an "as is-where is" basis. There are, however, some critical distinctions. First of all, in Award 172 there was an assertion by the Organization that the Carrier retained ownership of some of the material removed by the contractor. No such issue exists here. Second of all, and most importantly, in Case 296,

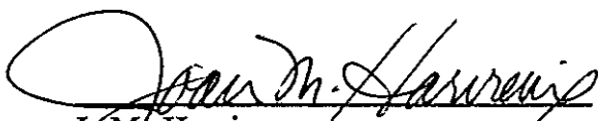
Award 172, the Carrier failed to provide satisfactory evidence that ownership had been transferred to the contractor at the time of dismantling. In this case, the Carrier has provided evidence that convinces us that ownership of the track had transferred to the outside concern at the time of dismantling. Accordingly, we conclude in line with well-established precedent, no violation of the agreement occurred in such circumstances.

AWARD

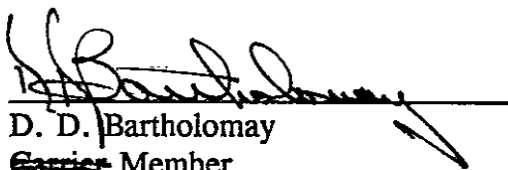
The claim is denied.



Gil Vernon, Chairman



J. M. Harvieux
Employee Member
~~CARRIER~~



D. D. Bartholomay
Carrier Member
~~Employee~~

Dated: 2/9/94