

PUBLIC LAW BOARD NO. 2960

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "It is the claim of the Brotherhood that due to the violation of the effective Agreement by the Carrier, Claimants Schave, Cannon, Anderson, and Wood must be compensated for an equal and proportionate share of 336 hours straight time to be paid at the applicable rates of pay for positions held on dates of claim."

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: On April 5, 1991, the Carrier sent the following notice to the General Chairman:

"Please accept this as the advance notice required under Rule 1(b) of the BMWC Scope Rule of the Carrier's Intention to subcontract certain work in connection with the construction of additional locker room facilities at Bill, Wyoming. Specifically, the Carrier intends to construct a wall to partition off a portion of the ladies welfare facilities, to provide additional locker room space, install lockers and create a doorway in an existing concrete block wall.

"At the present time the Carrier does not have sufficient personnel to fill the existing vacancies and the amount of work required is not extensive enough to justify the hiring of the additional personnel (estimate that this project can be completed in 5 to 7 days with a crew of 3 to 5 people). In addition, this work must be completed as soon as possible to provide facilities for train and engine service personnel now working out of Bill, Wyoming terminal. For these reasons, this work meets the exceptions of Rule 1(b) and may be performed by contract."

A conference was held to discuss the matter on April 30, 1991. However, the Parties failed to reach an agreement on the matter. The work proceeded, and subsequently a timely claim was filed protesting the subcontracting.

The claim involves the application of Rule 1(b) which reads in relevant part as follows:

"(b) Employees included within the scope of this Agreement in the Maintenance of Way and Structure Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common carrier service on the operating property. This paragraph does not pertain to the abandonment of lines authorized by the Interstate Commerce Commission.

"By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employees described herein, may be let to contractors and be performed by contractor's forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or, time requirements must be met which are beyond the capabilities of Company forces to meet.

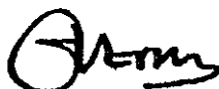
"In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Brotherhood in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. The Company and the Brotherhood representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the Company may nevertheless proceed with said contracting and the Brotherhood may file and progress claims in connection therewith.

"Nothing herein contained shall be construed as restricting the right of the Company to have work customarily performed by employees included within the scope of this Agreement performed by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible. (See Appendix J to this Agreement)."

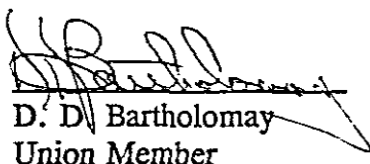
It is noted the record indicates that at the time of the notice the Local B&B crew was engaged in other projects. Additionally, there is an indication in the record that they were otherwise occupied at the time of actual work. This is significant when considered in conjunction with the fact that there were four open positions in the B&B subdepartment; in spite of the fact that there were employees on furlough in other zones of Seniority District No. 6. Two of these positions had remained unclaimed and unfilled for some six weeks. Given this and the limited scope and duration of the project, the Board cannot conclude that the agreement was violated.

AWARD

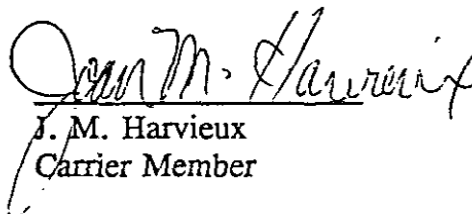
The claim is denied.



Gil Vernon, Chairman and
Neutral Member



D. D. Bartholomay
Union Member



J. M. Harvieux
Carrier Member

Dated: October 31 1994.