PUBLIC LAW BOARD NO. 4431

Parties to the Dispute	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES V. BURLINGTON NORTHERN RAILROAD COMPANY	Case No. 6

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier assigned rail grinding work on East Portland Seniority District between Spokane, Yakima and Wishram, Washington, to outside forces on a continuous basis beginning February 4, 1986.

2. The Carrier also violated the Agreement when it did not give the General Chairman advance written notice of its intention to contract out said work as stipulated in the Note to Rule 55.

3. As a consequence of the aforesaid violations, Welder Foreman E.E. Wendel and Grinders P.W. Wolf, D.C. Ellis, E.L. Gill, J.E. Tovar and R.L. Gill shall each be allowed eight (8) hours' straight time for each day and all overtime hours worked each day by contractor forces beginning February 4, 1986 and continuing until this violation ceases.

OPINION OF THE BOARD

Between February 4, 1986, and February 17, 1986, Carrier utilized the Loram Rail Grinder on the East Portland Seniority District. The Union contends that by subcontracting rail grinding work, Carrier violated Rule 1

(Scope) of the current Agreement. It argues that employes in the Welding Subdepartment classified as Grinder Operators have the exclusive right to perform all grinding operations on Carrier's rails. It also contends that Carrier failed to properly notify the General Chairman of its intent to contract out the rail grinder work and finally that it did not make a good faith effort to acquire the machines needed to perform the work in the same manner as the subcontractor.

Carrier denies all allegations and asserts that it has a right under the Note to Rule 55 (which reads in pertinent part as follows) to subcontract rail grinding of the type performed by Loram:

Note to Rule 55

> By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employes described herein, may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employes, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces. 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 Organization 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. Said Company and Organization representative 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 Organization may file and process claims in connection therein.

This Board has reviewed the record and studied Petitioner's arguments in detail. At the outset, the Board concludes that Carrier did properly notify the General Chairman of its intent to subcontract the rail grinding work. This Board considers the December 16, 1985, letter, together with the January 3, 1986 letter (Carrier's Exhibits 1&2), as proper notice under the Note to Rule 55. This Board also concludes that Carrier did not act in bad faith in this instance and has not violated the letter or spirit of Rule 55 or the December 11, 1981, Hopkins to Berge letter.

The Board has also carefully reviewed the Scope Rule arguments put forth by the parties and we are forced to conclude that the work performed by the Lomar self-propelled rail grinder is work of the magnitude and quality never contemplated by the Scope Rule of the Agreement. The work of a Grinder Operator as described in paragraph L of Rule 55, is outlined as follows:

L. Grinder Operator.

An employe assigned to the operation of a grinding device, performing all grinder operations, either preparatory or finishing, and including the use of the cutting torch, shall be classified as a grinder operator.

This language cannot be read to include the operation of a self-propelled Rail Grinder the size of two or more diesel engine units. Carrier correctly cited the Note to Rule 55 (Special equipment not owned by the Company) as justification for contracting with Lormar for such a big rail grinding job.

AWARD

The claim is denied.

R.E. Dennis, Neutral Member

Maxine Timberman, Carrier Member

Bruce Glover, Employe Member

May 3 1989
Date of Approval