PUBLIC LAW BOARD NO. 4431

Parties to the Dispute	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES vs. BURLINGTON NORTHERN RAILROAD COMPANY	Case No. 7

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier assigned dismantling and salvage work in the Othello Yard at Othello, Washington to outside forces beginning September 22 through November 7, 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, Section Foremen C.G. Vela and H.E. Johnson; Sectionmen M.L. Serosky, R.H. Ferguson, A. Basso, P. Balli and G.C. Meacham; Truck Driver J.A. White and Machine Operators P.A. Lorea and R.J. Greetan shall each be allowed two hundred eighty (280) hours' straight time pay and seventy (70) hours' overtime pay at their respective rates in addition to any other compensation they may have earned to compensate them for lost work opportunity due to contractor forces performing their work.

OPINION OF THE BOARD

On July 24, 1986, Carrier and Maverick Salvage, Inc. of Spokane, Washington, entered into an agreement for Maverick to purchase and remove six miles of yard track, ties, crossing, etc. at the Othello Washington Yard. At the

same time, Carrier submitted a bid to Maverick to buy back 10,000 cross ties and 791 Switch ties, banded and delivered to a designated location at Othello, Washington, for $10,791 or $1 dollar per tie.

Petitioner contends that the removal of the track ties and other items by Maverick was an illegal subcontract of BMWE work and not an arms-length sale of Company property, as claimed by Carrier. Petitioner argues that the buy back of 10,791 ties was a subterfuge to avoid utilizing Carrier personnel to remove, band, and stack the ties that Carrier intended to keep. Carrier only sold part of the yard to Maverick. The ties that were bought back never left the control of Carrier and therefore should have been worked by Carrier personnel. Petitioner relies on 3rd Division Award No. 24280 to support its case.

Carrier, on the other hand, contends that it sold the total yard to Maverick. Maverick owned the scrap and did not have to sell the 10,791 ties back to Carrier, if it chose not to. Carrier contends that the transaction was a sale and that, as such, no subcontract existed and no violation of the Note to Rule 55 took place.

This Board has reviewed the submissions of both parties and has paid special attention to the contract between Carrier and the Maverick Salvage Company. This review compels the Board to conclude that Carrier did indeed sell the yard to Maverick and that all material in the yard was transferred to Maverick when the deal was consummated on

July 24, 1986. For Carrier to buy back good reusable ties at a bargain price was not unusual nor was it an Agreement violation. Carrier sought a price from Maverick for 10,791 ties that it indicated it could reuse. Maverick gave Carrier a price of $1 a piece. Carrier accepted and the agreement was made. The wording of the contract on that point left the decision to buy up to Carrier and did not designate a pre-agreed-upon to price.

This Board cannot support Petitioner in this instance and we do not think that Award No. 24280 is on point. In that Award, Carrier maintained ownership of the ties in question throughout the time the track was being dismantled. In this instance, Carrier did not. It sold the yard and then bought back certain ties.

AWARD

The claim is denied.

R.E. Dennis, Neutral Member

Maxine Timberman, Carrier Member

Bruce Glover, Employe Member

May 3, 1989
Date of Approval