

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 13

Carrier File No. C-88-C100-78

Organization File No. MWA 88-10-27

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it assigned and/or otherwise permitted outside forces to perform work constructing an industrial track on the right of way near Mile Post 417.75 in the vicinity of Otis, Colorado, on the Colorado Division, Second Subdivision on June 27, 28, 29, 30, July 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29 and August 1, 2, 3, and 4, 1988.

2. The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plans to contract out or otherwise permit the performance of the work referred to in Part (1) hereof, as required in the Note to Rule 55 and the December 11, 1981 Letter of Agreement (Appendix Y).

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Foremen R. W. Blomstrom, J. R. Wheaton, Truck Drivers W. G. Blomstrom, G. T. Collicott, D. E. Zuege, T. L. Foster and L. R. Smith shall each be allowed an equal proportionate share of the total number of man-hours expended by the outside forces in performing the work referred to in Part (1) hereof from June 27 through August 4, 1988.

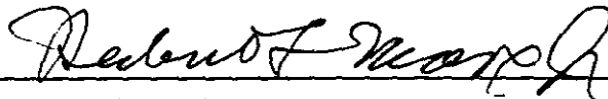
F I N D I N G S

This dispute concerns the leasing of land from the Carrier by Tempel and Esgar, an industry located at Otis, Colorado and the construction of track on such land. Ownership, maintenance and cost of the trackage was to be borne by the industry. Construction approaching the trackage was undertaken by the Carrier. Industry trackage construction was undertaken by an outside contractor employed by the industry.

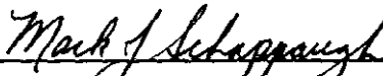
This dispute is parallel in all respects to those reviewed in Award No. 12. The Board adopts here by reference the Findings and result in Award No. 12.

A W A R D

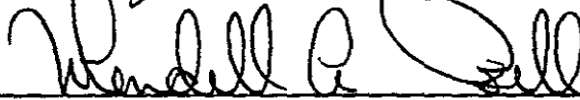
Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



WENDELL A. BELL, Carrier Member

NEW YORK, NY

DATED: 1/14/91