

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 26

Carrier File No. 4MWB88-11-9

Organization File No. T-M-631

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier assigned outside forces (Jackson Jordan, Inc.) to perform group 3 Machine Operator work, i.e., measuring existing alignment of curves at various locations, in preparation for tamping and aligning operations, beginning on June 17, 1988 and continuing.

2. The Agreement was further violated when the Carrier failed to provide the General Chairman with advance written notice of its plans to contract out the work involved here, in accordance with the Note to Rule 55 and Appendix Y.

3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Group 3 Machine Operator L. M. Ruter shall be allowed eight (8) hours pay at the Group 3 Machine Operator rate for each work day beginning on June 17, 1988 and continuing. He shall also be allowed pay at the Group 3 Machine Operator time and one-half rate for all overtime work performed by the outside forces accomplishing the aforementioned work.

F I N D I N G S

The Claimant herein is a Group 3 Machine Operator in the Track Subdepartment. As part of his assignment in tamping and realigning

track, he makes use of a Computer Curve Liner which assists in the determination of lining the curve of a track. The Organization makes reference to work performed beginning June 17, 1988 in which an outside concern made use of a "modified tamper", as defined by the Organization, "equipped with a computer curve analyzer (the same equipment utilized in Carrier tamping equipment)".

The Organization further describes the work as follows:

Information regarding the specific dimensions of each curve was gathered and analyzed by the contract employee who made modifications to the information, if necessary, based upon his experience with such information and later disseminated to the tamper operator who actually performed the tamping and lining work on the particular curve.

The Carrier describes the work in question as follows:

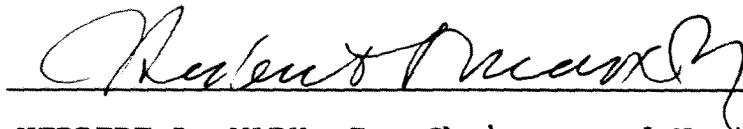
In order to clarify the meaning of the term as used in the statements, it must be remembered that "plotting", in this context, is no more than the operator's accepting the averaging of deviation points output by the computer and right or wrong, applying that information to achieve a realignment of the curve. In other words, a "best fit". This underscores the Carrier's position that the tamper operator's usage of information produced by the on-board computer is to facilitate his primary function of tamping and is accomplished, in most cases, by a single run of the curve. This type of maintenance operation cannot be compared to Curve Analysis, which requires the specific engineering knowledge necessary to expand upon, modify and override information produced by the Curve Analyzer in order to achieve a balanced curve conforming to engineering standards, such as is done by Jackson Jordan. Engineering functions of this magnitude are, and have always been, the responsibility of the Carrier's Engineering Departments and have never been let to the Maintenance of Way Employees.

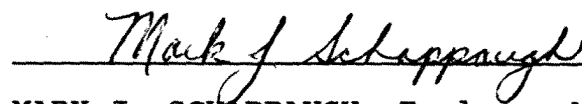
Although the same equipment may be utilized to some degree, it is clear to the Board that the work undertaken by the contractor's employee was not that of a Group 3 Machine Operator.

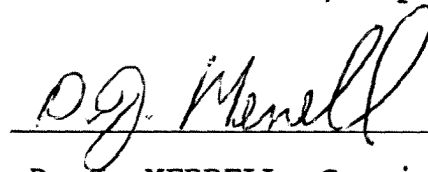
This is recognized even in the Organization's description, which refers to "modifications" in the curve made based on the outside employee's "experience with such information". This distinction goes to the essence of the dispute. There is no showing that the engineering phase, that is, possible redesign of the curve after data review, is work "customarily and traditionally" performed by Group 3 Machine Operators. The claim thus is without foundation.

A W A R D

Claim denied


HERBERT L. MARX, Jr, Chairman and Neutral Member


MARK J. SCHAPPAUGH, Employee Member


D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: April 6, 1992