

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award **Number 23310**
Docket **Number MW-23124**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Emploes**
{ **Chicago, Milwaukee, St. Paul and Pacific Railroad Company**

STATEMENT OF CLAIM: "Claim of the **System Committee** of the Brotherhood that:

(1) The Carrier violated the Agree-sent when it *used Assistant Roadmaster **Schmittou** to clean snow from switches at Scranton, **North Dakota** on **January 5, 1978 (System File C #28/D-2172)**.

(2) **Furloughed** Section Laborer **O. T. Thompson** shall be allowed eight (8) hours of pay at the section laborer's straight-time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: **The Carrier** utilized an Assistant **Roadmaster** to clear snow from switches on **January 5, 1978**. The Organization **asserts** that it should have recalled and assigned the Claimant - who had been furloughed on **December 2, 1977** - to perform the labor, inasmuch as he was **available** at his **home** and the Carrier has not questioned his availability.

The Carrier has relied upon an assertion that an emergency existed; but **in** its submission here, the General Chairman has cited Awards to **support** the **contention** that a **mere** allegation of an emergency does not establish one, and he concludes that the **Carrier** has the burden of **presenting** evidence Of an emergency.

While **certainly** we agree that **one** party may not merely assert a condition to be the case and **expect** us to accept that assertion without **further** proof. However, in this case as the matter was presented on the property, **we** find in the initial declination that the **Carrier** asserted that the area in question was experiencing blizzard snow conditions, **and** therefore the work would be classified as emergency. At no time while the **matter** was **under review on the** property did the Organization contest that the area was experiencing blizzard **conditions**, even though that assertion **was** repeated **in** the Carrier's correspondence.

It would be highly inappropriate under those circumstances to now **permit** the Organization to assert that the **Company** has failed to establish its **burden in this** regard. When a statement **is made** that an area in North Dakota, in **mid-January**, is experiencing blizzard snow conditions and that assertion is **not challenged** or denied, we feel that a Carrier has established its burden of showing an emergency.

Based upon the authority of **Third Division** Award 22755 and others, we **will** deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record **and** all the evidence, finds **and** holds:

That the parties waived oral hearing;

That the **Carrier** and the **Emploees** involved in this dispute are respectively Carrier and **Emploees** within the meaning of the **Railway** Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute **involved herein;** and

That the Agreement was not violated.

A W A R D

claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at **Chicago, Illinois**, this 29th day of May 1981.

