

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to perform snow removal work from the grade crossing at C. F. Yard to Cadott on February 21, 1986 (System File R249 #1642W/800-46-B-242).

(2) The Carrier also violated Rule 47 when it did not give the General Chairman advance notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, Tractor Operator R. L. Windsor shall be allowed eight (8) hours of pay at the tractor operator's straight time rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The undisputed facts of this case are that the Carrier was busily engaged in clearing away a rather heavy snowfall in the area here concerned and that on February 21, 1986, Carrier engaged an outside contractor to remove large mounds of snow that was blocking the vision of both trainmen and motorists at a highway crossing. The Organization argues that the Claimant, a Roadway Equipment Group III Machine Operator, was deprived of the work and that, further, the Carrier failed to provide the Organization with advance notice of the arrangement as specified in Rule 47.

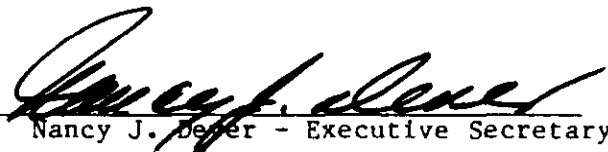
The use of employees in the Claimant's classification to perform snow removal work is not disputed. As the Board views the facts, the question of whether snow removal work has been "customarily and traditionally" performed by employees represented by the Organization is not the determinative issue here. Nor is a resolution required as to the Carrier's allegation that "exclusivity" must be demonstrated.

The Carrier offered evidence through the claims handling procedure that the work here involved required larger equipment than the Carrier had locally available and that rental of suitable equipment without an accompanying operator was not feasible. This point was emphasized repeatedly and was not, in the Board's view, convincingly contradicted. Therefore, due to the expediency required in neutralizing a potentially hazardous condition, the Board finds that a 15-day notice under Rule 47 was not required.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.