

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30967
Docket No. MW-30024
95-3-91-3-419

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
((Western Lines)

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

- (1) The Agreement was violated when the Carrier assigned outside forces to perform snow removal work on the Cascade District, Cascade Line between Oakridge, Oregon and Cascade Summit during February, 1990 (Carrier's File MofW 152-1132 SPW).
- (2) The Carrier also violated Article IV of the May 17, 1969 National Agreement when it failed to furnish the General Chairman with advance written notice of its intention to contract out said work.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Tractor-Bulldozer Operators W. P. Grotte, W. D. Roat, G. A. Arciaga, V. G. Mercado and K. C. Wullenwaber shall be:

'... paid a total of two hundred and ninety eight (298) hours each at the straight time rate of pay for the class of Tractor-Bulldozer Operator, class #17, or the difference in rate of pay for the month in whatever class they were working, because of being denied the opportunity to hold the tractor-bulldozer position.'"

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 employee 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.

During the time specified in the claim, the Carrier contracted out snow removal work between Oakridge, Oregon, and Cascade Summit. During this time, all of the Carrier's equipment was utilized for snow removal purposes and all affected employees available for work were working overtime and sometimes double time clearing snow. No furloughed employees were available. No notice was given to the Organization prior to the contracting out of the snow removal work.

We are satisfied that the record demonstrates an emergency sufficient to relieve the Carrier of its obligation to give the Organization advance notice of its intent to contract out the snow removal work. Under the circumstances, particularly given the fact that employees were working overtime and double time removing snow and further given that all of the Carrier's equipment was utilized for snow removal work, contracting out was permissible for the emergency presented.

The record as developed on the property does not sufficiently demonstrate that the Carrier changed its practices with respect to utilization of its employees and the obtaining of equipment for snow removal purposes. Nor does the record sufficiently demonstrate that the Carrier took action to reduce the amount of snow removal work performed by its employees in the past so as to substitute contractors to perform that work. At best, the record is in conflict in that regard.

The Organization's burden has not been met. The claim must be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.