

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37025
Docket No. MW-37452
04-3-02-3-530**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees**
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to remove snow and excess ballast from its switches on December 11, 2000 through January 2, 2001 (System File BRC-6694T).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman proper advance notice in writing of its intention to contract out the work in question in accordance with Rule 4.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants listed below shall at their applicable rates of pay for an equal and proportionate share of the five thousand four hundred ten (5,410) man-hours expended by the outside forces in the performance of the aforesaid work.**

**E. Antillon, Jr.
A. Breceda
A. Cadena
J. Carmona
J. Carmona
D. Carmona
D. Carter**

**E. Guzman
A. Hernandez
J. M. Hernandez
I. Huizar
I. Ibarra
J. Jimenez
L. Jimenez**

**J. Oliver
J. Oliveras
P. Oropez
R. Pizano
A. Ponce
S. Ramirez
O. Rodriguez**

M. Cintora
S. Cole
L. DeLeon
T. Depcik
B. Edgeworth
J. Esparza
M. Gonzales
A. Ruiz Gonzalez
F. Guerrero
G. Guzman

T. Kelly
L. Esparza
M. Lopez
M. Ludwig
O. Lugo
A. Maldonado
B. Martinez
R. Medina
J. Morales
I. Murillo

J. Romanowski
A. Santoyo
J. Santoyo
C. Silva
J. G. Silva
S. Stodolny
L. Villafuerte
R. L. Zavala"

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 were given due notice of hearing thereon.

The record herein placed a number of contentions at issue that included scope coverage, notice requirements, emergency circumstances, excessive remedy, and full employment. We need not deal with most of them because the record clearly establishes the existence of a protracted snow emergency. Beginning with a 9.5-inch drop on December 11, 2000, the Chicago area began receiving what would become record snowfall by the end of the month. Ten of the days between December 11 and the end of the month also saw below zero temperatures. The total snowfall for the month was 30.9 inches. The lingering effects of the weather led the Illinois governor to declare the region to be a disaster area on January 9, 2001. The federal government did so as well on January 18. The Carrier established these facts by submission of climatological data from the National Climatic Data Center and newspaper articles. The Organization did not strenuously disagree with the overall nature of the weather phenomena.

The Organization vigorously challenged the duration of the claimed emergency. Its challenge was based only on an assertion to the effect that true emergencies do not last for more than 20 days. While this may be true in many cases, the facts here show that six significant snowfalls spaced several days apart created either a genuine long-lasting emergency or a series of new ones that effectively nullified previous recovery efforts. From either perspective, the weather did not provide the Carrier with the advance warning necessary to provide the General Chairman with the 15-day minimum advance written notice(s) otherwise required by Rule 4. We also note that Rule 31 includes "snowstorm" in its list of emergency conditions that allow the Carrier to change starting times to deploy its recovery forces into two 12-hour groups. Rule 31 also grants the Carrier the discretion to determine when the emergency condition no longer exists.

It is well settled that genuine emergency situations with relatively sudden onset excuse Carriers from advance notice requirements. Such emergency situations also excuse any Agreement prohibitions on the contracting of work to permit the rapid augmentation of its own forces in recovery efforts. The facts here establish such justifying circumstances. Accordingly, we find no violation of the Agreement.

AWARD

Claim denied.

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 18th day of May 2004.