

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37459
Docket No. MW-37018
05-3-01-3-646

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 Employes*
(CP Rail System (former Delaware and Hudson
(Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier called and assigned outside forces to perform Maintenance of Way work (operate front end loader to assist in repair of washout) in the vicinity of the American Tissue Switch at Mile Post A 17.4 on the Colonie Main Line on August 2 and 3, 2000, instead of calling and assigning Machine Operator R. Therrien (Carrier's File 8-00168 DHR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Therrien shall now be compensated for seven (7) hours' pay at his respective time and one-half rate of pay.”

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.

On August 2, 2000, a portion of the Colonie Main Line was affected by a washout resulting in the stopping of trains and rendering that portion of the line out of service. Determining that it would be too time consuming to use a front end loader located at Voorheesville which could have been operated by the Claimant, the Carrier opted to bring in a contractor to work on the washout. However, it took the contractor two and one-half hours to get its equipment to the site. This claim followed.

Rule 1.3 provides:

“In the event the Carrier plans to contract out work within the scope of this Agreement, except in emergencies, the Carrier shall notify the General Chairman involved, in writing, as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto. ‘Emergencies’ applies to fires, floods, heavy snow and like circumstances.”

Clearly, the washout involved in this dispute presented an emergency as contemplated by Rule 1.3. The washout stopped trains and rendered that portion of the line out of service.

The Carrier has substantial latitude in dealing with emergencies. See Third Division Award 26677 and Awards cited therein (“The Board has held that in an emergency Carrier may take whatever action it deems appropriate to cope with its problems. . . .”) Rule 1.3 therefore does not bar the Carrier’s use of a contractor in this case.

The Organization argues that if the Claimant had been used, the Carrier’s equipment could have been on the site in one hour. However, the fact that it took the contractor two and one-half hours to get its equipment to the site does not require a sustaining award. See Third Division Award 12299 (“In an emergency, a

Carrier must be allowed great latitude in making on-the-spot judgments which should not be upset even if later, more leisurely reflection should prove them to have been erroneous unless bad faith was involved.”). There is no evidence that the Carrier acted in bad faith.

The fact that the contractor worked during a two day period on the site also does not change the result. In this case, the emergency nature of the job did not change because the work extended into the next day.

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 19th day of April 2005.