

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
—THIRD DIVISION**

Award No. 37529
Docket No. SG-37259
05-3-02-3-166

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP):

Claim on behalf of employees H. E. Smith, J. W. Blevins, D. J. Lasswell, K. M. Cline, M. C. Lange, C. L. Stone and F. L. Ratcliff for 272 hours each at their respective time and one-half rates account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed a contractor to put out portable generators and refuel them as needed at several locations on the Jonesboro and Brinkley Subdivisions, depriving the Claimants of this work opportunity. Carrier's File No. 1258242. General Chairman's File No. S-SR-125. BRS File Case No. 11924-UP.”

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.

In December 2000, several south central states experienced a major ice storm. The ice storm caused the Little Rock, Arkansas, airport to close for three days and the Arkansas state government to shut down. Nearly a half million homes across the southern Plains lost power. At least ten traffic deaths were attributed to the storm.

The ice storm caused the Carrier to lose electrical power at many of its grade crossings and signals on the Jonesboro and Brinkley Subdivisions in Arkansas. On or about December 15, 2000, the Carrier used a contractor (CW&W) to deliver portable generators to its crossings and signals in Arkansas. The contractor refueled the generators as needed through December 31, 2000.

On January 30, 2001, the Organization filed a claim on behalf of Signal Department employees assigned to Signal Gang No. 2690 on December 30, 2000. The Organization asserted that the Carrier violated the Scope Rule governing the rates of pay, hours of service and working conditions of employees in the Signal Department. According to the Organization, the Scope Rule reserves the work performed by the contractor to the Claimants and, therefore, they should have been used to perform it. Due to this Scope Rule violation, the Organization contends that each Claimant is entitled to 272 hours of compensation at their respective overtime rates.

The Carrier denied the claim asserting that the use of portable generators is not embodied in the parties' Scope Rule. And even if the placement and refueling of portable generators was encompassed by the Scope Rule, the Carrier maintains that it had the right to use a contractor to provide this service in light of the emergency conditions caused by the severe ice storm in Arkansas in December 2000.

That the ice storm which blanketed several south central states in December 2000, was severe cannot be gainsaid. The ice storm caused more than one-half million homes and businesses in Arkansas, Oklahoma, Texas, and northern

Louisiana, to lose electricity for several days. The storm caused the Carrier to lose electricity at numerous road crossings and signals in Arkansas.

In view of the severity of the ice storm, the Board finds that the Carrier had the right to respond to this emergency by utilizing a contractor to place portable electric generators at road crossings and signals and to refuel them as necessary. Naturally, the Carrier had the right to ensure that its road crossings and signal systems were functioning properly in order to protect the public, its employees and its property. The Carrier acted prudently under the exigent circumstances.

The Organization argues that the circumstances extant in the December 2000 ice storm were no different than the Y2K Manpower Utilization Plan that the Carrier developed in 1999. The Board disagrees.

In 1999, the Carrier developed a contingency plan in the event that it experienced emergencies in the field caused by Y2K. Part of this contingency plan involved the storing of generators to be available for use by the Signal Department in case of an emergency. Fortunately, the portable generators were not needed. The potential problems that could result by Y2K were well known prior to New Year's Day in 2000. Many businesses developed contingency plans to deal with computer failures that were anticipated at the beginning of a new millennium.

The Carrier's Y2K contingency plan was clearly distinguishable from the December 2000 ice storm that affected its road crossings and signals in Arkansas. The ice storm was unanticipated and atypical in its severity. Unlike Y2K, the Carrier could not develop a contingency plan in December 2000, because the ice storm was an unforeseen act of nature. We reemphasize that in light of the exigent circumstances caused by the unusual and extensive ice storm in December 2000, the Carrier had the right to use a contractor to station portable electric generators at road crossings and signals and to require the contractor to refuel them as necessary. The claim must be denied as a result.

Form 1
Page 4

Award No. 37529
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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 23rd day of June 2005.