

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 38091  
Docket No. MW-37264  
07-3-02-3-272

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  
(Union Pacific Railroad Company (former Chicago &  
( North Western Transportation Company)

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it assigned Seniority District 3 employees D. W. Crowe, T. L. Felder and M. C. Herring to perform work (remove snow) on Seniority District 9 territory at Mile Post .20 on the Milwaukee Subdivision on December 16, 2000 through December 21, 2000 instead of furloughed Seniority District 9 employees C. J. Spencer, M. V. Hidalgo and E. L. Davis (System File 9KB-6697T/1263959 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. J. Spencer, M. V. Hidalgo and E. L. Davis shall now be compensated for an equal and proportionate share of the seven (7) hours straight time and two hundred four (204) hours overtime service rendered by District 3 employees D. W. Crowe, T. L. Felder and M. C. Herring in the performance of the aforesaid work on District 9.”**

**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.

It is undisputed that the Claimants were on furlough status in Seniority District 9 on the dates of the claim when record snowfall struck the region. The fact of the heavy snowfall is documented in the record and agreed to by the Organization. It is further undisputed that three employees holding seniority in District 3 were allowed to work in the Claimants' seniority district during the claim period clearing and/or removing snow while the Claimants did not participate in the recovery efforts.

Notwithstanding the foregoing facts, a statement in the record from a Carrier official asserted that one of the Claimants was personally offered the opportunity to perform the snow fighting work and the other two Claimants were called at their phone numbers of record with a similar work offer. Moreover, according to the statement, work was available for anyone who wanted it and the Carrier took various steps to disseminate this information as widely as possible under the circumstances. While the Organization alleged certain deficiencies in the contents of the statement, the record contains no first-hand evidence whatsoever in opposition to it. Significantly, there were no statements from any of the three Claimants to challenge the assertions contained in the statement.

Given the foregoing circumstances, we must find that the Organization failed to satisfy its burden of proof to establish a violation of the Agreement as alleged in the claim.



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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 21st day of February 2007.