

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39941
Docket No. MW-40703
09-3-NRAB-00003-080504**

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago and
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (McDowell and Sons Contractors) to perform Maintenance of Way and Structures Department work (snow removal) at crossings between Mile Posts 134 and 167 on the Mason City Subdivision on March 6 and 7, 2007 (System File R-0714C-307/1475494 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance notice of its intent to contract out the aforesaid work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1(b) and Appendix 15.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant B. Shannon, Jr. shall now be compensated for sixteen (16) hours at the applicable straight time 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 the dates in dispute, the Claimant held a Machine Operator's position and was on furlough status.

On March 6 and 7, 2007, the Carrier engaged an outside contractor, (McDowell and Sons) to clear snow from crossings between Buckeye and Chapin, Mile Post 134 to Mile Post 167, on the Mason City Subdivision. The contractor's employee worked eight hours on each of the days performing the snow removal work. The Claimant was not called to perform the duties.

In its Submission, the Carrier asserts that an "emergency" existed, therefore allowing it broader latitude with respect to the requirements of the Agreement. According to the Carrier's letter of June 14, 2007:

". . . [T]he work was the result of winter weather in the area resulting in the removal of snow. . . . [T]he frozen ruts in the documented crossings were becoming a great risk to public traffic. Therefore to keep the respective areas clear for Carrier services and the public traffic, the Carrier had to utilize the contracted force to help local forces manage the crossings. . . . [T]he crossings had to be addressed immediately in order to divert the risk to Carrier services and the public traffic."

This claim has merit.

First, the conditions on the dates in dispute did not constitute an "emergency." As the Carrier points out, an "emergency" is ". . . an unforeseen combination of circumstances which calls for immediate action." Third Division Award 20527 quoting Third Division Award 10965. As the Organization points out

in its letter of July 19, 2007, “[a] build of snow at crossings happens every time there is a snow fall.” We fail to see how the conditions described by the Carrier meet the definition of an “emergency.”

Second, even if an “emergency,” the Carrier was obligated to at least attempt to call the Claimant (who was on furlough) to see if he was available to perform the work. That was not done.

Third, the Carrier’s assertions that the Claimant was not qualified to perform the work are not supported by the record. According to the Claimant, “I can run a back hoe and am familiar with all the rule[s] for running machines on the Union Pacific Railroad.” The Claimant was a Machine Operator and nothing shows that the Claimant could not operate the equipment necessary to perform the snow removal work.

Fourth, Rule 14(D) provides that “[f]urloughed employees shall be called in seniority order for extra and relief work.” The snow removal work in dispute appears to be extra work for which the Claimant should have been called.

The Organization met its burden. The Claimant shall be made whole for the lost work opportunity (16 hours straight time as claimed).

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of September 2009.