

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40549
Docket No. MW-39635
10-3-NRAB-00003-060445
(06-3-445)**

The Third Division consisted of the regular members and in addition Referee Daniel F. Brent when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (Hulcher) to perform Maintenance of Way work (clean snow from switches) at Murray Yards in Kansas City, Missouri on January 5, 2005 [System File C-05-C100-47/10-05-0096(MW) BNR].**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman advance written notice of its plans to contract out the above-described work as stipulated in the Note to Rule 55 and Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. Mendoza, S. Scheerer, G. Marquez and R. Newberry shall now each be compensated for three (3) hours at their respective time and one-half rates 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.

The instant case involves the failure to give advance notice to the General Chairman before using sub-contractors to dump piles of snow in the Murray Yards in Kansas City, Missouri, on January 5, 2005 using a contractor's dump truck. The Carrier contends that this was an "emergency" situation. However, the Organization contends that the snow had already been plowed and moved after the snowstorm in a manner that permitted train movement within the yard, and that the contractor's dump truck was simply removing piles of accumulated snow from the yard.

The Agreement contains a Truck Driver classification. After a substantial snowfall, the Carrier determined to move snow from one portion of its property to another portion of the Carrier's property. As the Organization aptly contends, Hertz and other rental companies had dump trucks suitable for this purpose readily available, and such equipment could have been rented as contemplated by the Agreement. Moreover, because the snow had been stockpiled from an earlier snowstorm, the removal of the snow from the Carrier's premises did not constitute a true emergency. Moreover, heavy snowfall in Missouri during the winter is not an unexpected event.

Because no attempt was made to assign the disputed work to bargaining unit employees who were available and qualified to perform this work, which is within the scope of their job classification, the Carrier violated the Agreement when it assigned outside forces to perform this snow removal at the Murray Yards in Kansas City, Missouri, on January 5, 2005. The Agreement was further violated when the Carrier failed to provide the General Chairman advance written notice of its plans to contract out the above-described work as stipulated in the Note to Rule 55 and Appendix Y. Consequently, Claimants D. Mendoza, S. Scheerer, G.

Marquez and R. Newberry shall now each be compensated for three hours at their respective time and one-half rates of pay as a result of this violation.

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 29th day of June 2010.