

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40690
Docket No. MW-39758
10-3-NRAB-00003-060585
(06-3-585)**

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

**(Brotherhood of Maintenance of Way Employees 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 and 6, 2005 [System File C-05-C100-48/10-05-0097(MW) BNR].**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman advance 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 C. Oliver, R. Casady, R. Hernandez and W. Carpenter shall now each be compensated for twelve (12) 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.

A substantial snowstorm struck Kansas City, Missouri, on or about January 5 and 6, 2005. In response to the storm, the Carrier assigned all available BMW bargaining unit employees to around the clock snow removal duties. The Claimants and their colleagues were assigned to work 12 to 16 hours per day, including down time to warm up in order to avoid frostbite. The evidentiary record reflects that employees were paid for 16 hours even if they worked only 12 hours. To supplement the Carrier's forces, outside forces employed by Hulcher were engaged to remove snow as the Carrier tried to minimize the impact of the storm on its railroad operations.

The Organization contends that the Claimants were improperly deprived of an overtime opportunity by the use of contractors' forces for snow removal and to clean switches in Murray Yard. The Organization further asserts that the Organization was deprived of advanced notice of the contracting out as required by the Agreement.

The disputed snow removal work occurred during a severe snowstorm on January 5 and 6, 2005, that required constant and immediate attention. After a substantial snowfall, the Carrier assigned employees to remove snow and to clean switches in Murray Yard. Such exigent snow management activity required not only that aggrieved BMW-represented employees be assigned 12 to 16 hour per

day of work, earning eight hours per day of overtime pay for the duration of the storm, plus adequate rest for their safety and health, but also required that snow removal be concurrently assigned to other BMW-represented employees in different job classifications, as well as to outside vendors. This assignment was entirely proper for several reasons.

First, such snow emergency work has not been performed exclusively by BMW-represented employees in the Claimants' classification. The Board has repeatedly held that such exclusivity is essential to reserving work between classifications of bargaining unit employees. Second, even if the disputed work had been assigned exclusively to the Claimants' job classification, the Carrier's valid business necessity of clearing the snow and keeping the railroad running in inclement weather, in order to resume operations as quickly as possible, justified the assignment of the disputed snow removal work to other classifications. When these BNSF employees were working to the reasonable limit of 12 actual hours of work per day, the Carrier resorted to outside forces for help in a snow emergency without violating the Agreement.

The evidentiary record established clearly the need for prompt removal of snow, the priority assignment of reasonable overtime to the Claimants, and the insufficiency of the reasonable overtime hours worked by the Claimants to address the Carrier's valid business needs in a timely manner. This was not a case of removing accumulated snow after the snowfall had ceased when time was not of the essence. The instant case also differs from other cases decided by the Board where 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 Board has held repeatedly that such work is not within the exclusive jurisdiction of the Claimants' classification and that outside vendors may be engaged when BMW-represented forces of various classifications have been fully utilized on a priority basis to deal with such exigent circumstances and their direct and immediate impact is insufficient to assure the Carrier's ability to conduct its railroad operations.

The issue of prior notice to the General Chairman is also covered under the emergency language of the Agreement. Given the nature of the storm and the Carrier's response to the storm, it would have been impractical to give advance notice to the General Chairman and then to have engaged in meaningful discussions before summoning outside forces to perform emergency snow removal assignments, particularly cleaning switches. Thus, the emergency provision exempting the customary advanced notice governs the instant case, and the Carrier's failure to provide such notice did not violate the Agreement.

Therefore, based on the evidence submitted, the Carrier did not violate the Agreement when it assigned outside forces to perform snow removal from switches in Murray Yard on January 5 and 6, 2005.

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 1st day of November 2010.