

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40924
Docket No. MW-41073
11-3-NRAB-00003-090352**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Chicago &
(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 Federated Craft Welder R. Hass and Welder Helper C. Slaght to perform Maintenance of Way and Structures Department trackman's work (snow removal from switches and related work) in the Janesville Yard on Seniority District T-8 on dates beginning December 28, 2007 through February 19, 2008 (System File B-0801C-103/1500444 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Kopp, A. Murray, J. Beilke, R. Dehmlow and K. Meilke shall now each ‘ . . . be compensated at their applicable rates of pay for the two hundred twenty-four (224) hours straight time rate and one hundred thirty-nine (139) hours at time and one half rate, and thirty-two (32) hours at double time rate expended by the Federated Craft Welder, Mr. Hass and Federated Craft Welder Helper, Mr. Slaght in performance of the switch cleaning, switch oiling and snow and ice removal cited herein.”**

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.

This claim concerns the use of Federated Welders assigned to Gang No. 3196 to remove snow from switches at Janesville, Wisconsin, between December 28, 2007, and February 19, 2008.

It is the position of the Organization that the Carrier violated the Agreement when on multiple dates the Carrier directed Welder R. Hass and Welder Helper C. Slaght to perform the aforementioned Trackman work. It argued that the work was covered work and should have been assigned to the Claimants. As proof that the work belonged to its members, it offered multiple statements from craft employees across the system attesting to the fact that they perform snow removal work. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that, according to the Manager Track Maintenance (MTM) the two employees in question were primarily performing their regularly assigned welding duties on the dates claimed. The MTM further stated that only during heavy snow falls did the Welders assist local forces with snow removal and associated duties (i.e., lookout duties) and during this time period, there were record setting snow fall amounts. The MTM explained that to remedy the emergency situation and keep trains moving, the Carrier had to utilize the Welders to help local forces remove the accumulation of snow.

The Carrier argued that the Organization is aware that when faced with an emergency situation, such as the one in this matter, numerous Awards have determined that the Carrier has a more liberal right to assign work to available forces. It also asserted that outside forces have historically performed such work without protest in like situations from the Organization, and in this instance, the Carrier chose to use other available employees to assist. It closed by asking that the claim remain denied.

The Organization offered several on-property Awards, which according to it, stand for the proposition that snow removal work is encompassed within the scope of the Agreement, such as Third Division Award 36933, as well as Awards 16 and 17 of Public Law Board No. 1844. In Award 36933, the Board ruled "Regarding the claim for snow removal work performed on January 25, 1999, the Board finds that the record does not demonstrate that a snow emergency existed." In Award 16, the PLB determined that "Assertions of emergency are not persuasive on this record." In Award 17, the PLB stated "We are not persuaded by Carrier assertions of emergency." Those rulings on behalf of the Organization were on the basis that there was no showing of an emergency.

On the property the Carrier argued that during the time period in dispute the Carrier was faced with an emergency situation. The MTM offered a written statement concerning the weather, which stated in pertinent part:

"... This was deemed an emergency time, due to the unusual heavy snow fall that we have had this winter, a record setting year."
(Emphasis added)

The Carrier also argued that the Welders primarily performed their regularly assigned welding duties on the dates claimed as attested to by the MTM's statement that only during heavy snow falls did they assist local forces with snow removal and associated duties.

It is well established by arbitral precedent that when a Carrier is faced with an emergency situation it is afforded greater latitude in the assignment of its employees to accomplish necessary work. In Third Division Award 20527 an emergency was defined as follows:

“. . . an unforeseen combination of circumstances which calls for immediate action (Award 10965). In this Division and in the other Divisions of the Board it is well established that the Carrier, in an emergency, has broader latitude in assigning work than under normal circumstances. In an emergency the Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures.”

In the instant case, there was no significant argument and/or proof to rebut the MTM’s statement that there were record snow fall accumulations at Janesville, Wisconsin, during the claim period, or that the Welders did not primarily continue to perform their normal duties. As stated above, the Carrier is afforded broader discretion in the assignment of work during an emergency and in this instance we are not persuaded those conditions did not exist. Therefore, the Board finds and holds that the claim must remain denied.

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 24th day of March 2011.