

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40927
Docket No. MW-41076
11-3-NRAB-00003-090427**

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**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Boehme Construction) to perform Maintenance of Way and Structures Department work (snow removal and related work) between Mile Posts 40.0 and 56.0 on the Pocatello Subdivision of the Idaho Division on February 6, 11, 12, 14, 15, 16, 17, 19, 20, 25, 29 and March 4, 2008 (System File C-0852U-166/1501890).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance written notice of its intention to contract out said work or make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants T. Lloyd and D. LeFevre shall now each be compensated for one hundred and sixty-two (162) hours at their respective and applicable 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.

This claim concerns the use of contractor forces (Boehme Construction) to assist maintenance-of-way forces to remove snow between Mile Posts 40.0 and 56.0 on the Pocatello Subdivision of the Idaho Division.

It is the position of the Organization that the Carrier violated the Agreement when on multiple dates it contracted with Boehme Construction to do snow removal work at the aforementioned location. It argued that the situation may have been urgent, but it was not an emergency and should have been handled by covered employees such as the Claimants. It argued that work was protected by its specific Scope Rule and the Carrier failed to provide a notice to contract said work. It further argued that the Claimants were qualified to do the work. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that the disputed work has been handled in a mixed practice fashion with both contractors and its own employees and does not exclusively belong to the BMWF craft under its general Scope Rule. The Carrier offered statements alleging that the weather conditions caused an emergency service interruption of rail traffic which was covered by Rule 52(c) wherein it refers to: "... emergencies such as wreck, washouts, fires, earthquakes, landslides and similar disaster." The Carrier's emphasis was on similar disaster asserting that the overabundance of snow necessitated the help of outside forces and there was no need for a notice under those conditions. It closed by asking that the instant claim remain denied.

On the property the Carrier argued that during the time period covered by the dispute it was faced with an emergency situation. The Manager of Track Maintenance (MTM) offered a written statement concerning the weather conditions which stated in pertinent part:

“We were in emergency snow removal because of the winter storms and record snows and could not keep up with existing men and equipment.” (Emphasis added)

The Manager Track Projects also offered a written statement that weather conditions constituted an emergency and the contracting forces were needed to assist its workforce. He stated the following:

“This was an emergency situation and the contractors were called in to assist our men and equipment.”

In its ExParte Submission to the Board the Carrier offered an additional statement from another MTM regarding the weather conditions. That statement was not considered in the resolution of this dispute as it was “de novo” as there was no indication that it was exchanged on the property.

Review of the record substantiates that the MTMs’ descriptions of record snowfalls were not effectively rebutted as there were no statements from anyone on the property at the location in dispute who could have provided a different view point nor is there anything such as evidence from the Weather Bureau to counter either statement. The Organization's characterization that the situation was urgent, but not an emergency does not suffice as a sufficient rebuttal.

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

“ . . . an unforeseen combination of circumstances which calls for immediate action (Award 10965). In this Division and in 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.”

As previously stated the Organization did not effectively dispute the Carrier’s rendition of the factual situation. Rule 52(a) allows for contracting work when “. . . the Company is not adequately equipped to handle the work, or when emergency time requirements exist. . . .” As stated in Third Division Award 29999 the need for advance notice to the Organization is mitigated in emergency situation cases. Because the matter in this instance meets the definition of an emergency there is no need to review any other arguments raised by the parties. The Board finds and holds that the claim is 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.