

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41007
Docket No. MW-41042
11-3-NRAB-00003-090395**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 (Hodgeson and Son Contracting) to perform Maintenance of Way and Structures Department work (snow removal and related work) between Mile Posts 236.0 and 259.0 on the La Grande Subdivision of the Oregon Division on December 30 and 31, 2007 and January 2, 12, 13, 14 and 15, 2008 (System File C-0852U-154/1497330).**
- (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, Claimant H. Montgomery shall now be compensated for fifty-six (56) hours at his respective straight time rate of pay and for fourteen (14) hours at his respective time and one-half 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.

This case is another in the series of claims submitted by the Organization protesting the contracting of snow removal during various periods in January and February 2008 in the Northwest Region. The record is identical to that presented to the Board in Third Division Award 41006 (with the exception of the section of track, Subdivision, and the claim dates) including the identity of the Claimant and argument of the parties with respect to the existence of an "emergency" and fitness and ability of the Claimant to operate the front end loader utilized by the disputed contractor employee for snow removal. The Organization admitted the urgency of snow removal in this case, but contended that it did not amount to an emergency because there was no showing of a suspension of service for any of the reasons listed in Rule 52. The Carrier submitted a number of articles from its Northwest Passage Newspaper for the First Quarter of 2008 indicating the historical amounts of snow falling in the Spokane area, and thanking named employees for their hard work and service in dealing with these extreme weather conditions. The Carrier asserted that the Claimant did not have sufficient fitness and ability to be assigned to the duties of a front end loader as required by Rule 10, relying on the Machine Operator Qualification Database (MOQD) showing that the Claimant had not qualified on such equipment. The Organization took issue with the accuracy of the MOQD asserting that Roadway Equipment Operators (REOs) are called upon to operate lots of equipment not listed on the MOQD, and stated that the Claimant had requested training in, or operated, other types of equipment that could have been used to remove snow.

A careful review of the record convinces the Board that its rationale for sustaining the claim in Third Division Awards 41003 and 41006 is equally applicable herein. While the Carrier presented evidence of the existence of an unprecedented amount of snowfall in the Pacific Northwest in January and continuing through mid-February, it did not sustain its burden of establishing an emergency situation permitting it to bypass employees with seniority under the Agreement, who operate equipment that could be utilized for snow removal, such as the Claimant, in favor of using a contractor employee regularly scheduled for repeated, daily overtime performing snow removal. In the absence of evidence of actual train delays or other service interruptions on the La Grange Subdivision during the claim period, or proof that all of its employees were similarly scheduled and working daily overtime for the purpose of snow removal or related work, as was the situation in Third Division Award 41005, a showing of larger than normal amounts of snowfall over an extended period of time in an overall region is insufficient to meet the Carrier's burden of establishing the existence of an emergency justifying the repeated use of a contractor employee, including overtime, for snow removal on a continuous basis. See Third Division Awards 32414 and 36854. Because the Carrier did not dispute the number of hours worked by the contractor employee, or establish that the work could only be accomplished using a front end loader, we conclude that this contracting constitutes a lost work opportunity, and we will sustain the claim and direct a monetary remedy for the Claimant. See Third Division Award 40081.

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 20th day of July 2011.