

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41010
Docket No. MW-39977
11-3-NRAB-00003-070182**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Corman) to perform Maintenance of Way work (remove/clean snow from turnouts) on BRC (Belt Railway of Chicago) property on December 12, 13, 14, 15 and 21, 2005 (System File BRC-6897T).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman proper advance notice in writing of its intention to contract out the work in question or make a good-faith effort to reach an understanding in accordance with Rule 4 and the August 1, 2005 Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, ‘. . . each member of the Brotherhood of Maintenance of Way Employees employed on the BRC be compensated, an equal and proportionate share, of the eighty (80) hours worked by the contractors.’”**

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.

According to the record, heavy snow of approximately ten inches fell in the area of the Carrier's operations before the dates of the instant claim. The Carrier augmented its own forces with contractor forces to clean the snow from turnouts. The claim alleged the Carrier's action violated Rule 4 of the 2005 Agreement as well as an August 1, 2005 Agreement that specifically permitted the Carrier to contract certain specified work. Among other contentions, the Organization noted that the snow removal work was not among the project work listed in that Agreement.

Although the record developed by the parties on the property jostled over whether an emergency existed and, if so, how long it lasted, the record shows that the pivotal issue in this dispute is whether the type of snow removal work in question is covered by the scope of the Agreement. No specific reservation of work language was cited to identify scope coverage. In the alternative, careful examination of the record does not reveal any actual evidence that BMW-represented employees have performed the work in question in response to a significant weather event without augmentation on a historical, customary, and traditional basis. Such evidence is necessary to establish scope coverage in the absence of explicit reservation of work language in the Agreement.

The Board has previously dealt with this same issue between these same parties. For essentially the same reasons expressed in Third Division Awards 37024 and 37025, the instant claim must be denied.

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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 20th day of July 2011.