

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41679
Docket No. MW-40935
13-3-NRAB-00003-090217**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Supervisor P. Stenson to provide protection for outside forces (Zacher Excavating) performing Maintenance of Way and Structures work at Mile Post 142.6 on February 13 and 14, 2007 instead of calling and assigning Track Sub-department employee D. Pansch. (System File C-07-330-013/8-00228-137).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Pansch shall now be compensated for twenty (20) hours at his applicable Track Sub-department straight time 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.

There is no dispute that on the claim dates in question, February 13 and 14, 2007, the Carrier assigned Zacher Excavating forces instead of Maintenance of Way and Structures Department employees to break up an ice flow on tracks in the vicinity of Mile Post 142.6 on the Elbow Lake Subdivision.

In a companion case pertaining to this identical circumstance (Third Division Award 41678) contrary to the Organization's claim that the Carrier was contractually obligated to assign employees of its craft to break up the ice flow in question, the Board found that the situation presenting itself on the two claim dates in question constituted an "emergency" as that term has been defined by previous decisions of the Board. In so finding, the Board held that the Carrier was well within its rights to contract out the work in question and denied the claim.

In the companion case the Organization asserted that one of the contractor's employees operated an "ordinary" backhoe to perform the work of breaking up the ice flow and never referenced the Carrier's utilization of a supervisor to perform flagging service to protect the work of the outside contractor's employee. The Carrier asserted in the instant case that the Organization presented no evidence of any flagging work having been performed in conjunction with the work of removing the ice flow from the tracks. In point of fact, the Carrier notes that two Maintenance of Way employees were utilized to hold and secure protection. The Carrier further asserts that it did not call anyone off of the call list, which would have resulted in an increase in force and, therefore, it did not commit a violation of Rule 14 of the Agreement.

The instant claim, like the claim in the companion case, requests a remedy of 20 hours at the straight time rate of pay to be paid to the named Claimant. The record

evidence supports the Carrier's contention that even if it was obligated to utilize the call list to accomplish the required work in question, which the Board found it was not so obligated, the Claimant was not listed on the proper call list and, therefore, was improperly identified by the Organization as the employee harmed by not having been called to perform the asserted work.

Based on the foregoing discussion and analysis, the claim must be 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 18th day of June 2013.