Award No. 14321
Docket No. MW-15496

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY
(M&STL Railway Company Division)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned or otherwise permitted employes holding no seniority on the territory formerly comprising the Minneapolis and St. Louis Railway Company to remove snow and ice from that portion of the tracks at New Ulm, Minnesota which is encompassed within the Minneapolis and St. Louis Division. (Carrier's file 81-25-7)

(2) Section Foreman E. B. Malmer and Section Laborer A. J. Liebl each be allowed pay at their straight time rates for an equal proportionate share of the total number of man hours consumed in the performance of the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimants were regularly assigned to their respective positions on the Minneapolis and St. Louis Division and were assigned to a territory which included New Ulm, Minnesota.

On January 6, 9, 14, 17, 22, 30 and February 6, 20, 25, 26, 28, 1964, the Carrier assigned Chicago and North Western section forces, who do not hold any seniority under the controlling Agreement, to remove snow and ice from Minneapolis and St. Louis Division tracks and switches at New Ulm, Minnesota. Said section forces consumed a total of two (2) hours on each of the claim dates except for February 6, 1964, when they consumed a total of four (4) hours in the performance of the subject work.

The Claimants, who were performing routine maintenance work elsewhere on their section territory at the times the subject work was being performed, were available and qualified to perform same but were not notified to do so.

Although the Minneapolis and St. Louis Railway Company has merged with the Chicago and North Western Railway Company and is now the Minneapolis and St. Louis Division, separate Agreements continue to respectively control on the territories formerly comprising the two separate railroads. Since the violations upon which the instant claim is based occurred on the Minneapolis and St. Louis Division, said claim is controlled by the

February 6, 1964 — 4 hrs. removing snow and ice
February 20, 1964 — 2 hrs. removing snow and ice
February 25, 1964 — 2 hrs. removing snow and ice
February 26, 1964 — 2 hrs. removing snow and ice
February 28, 1964 — 2 hrs. removing snow and ice

A total of 24 hours."

Claim has been denied as on this property the work of removing snow and ice from the carrier's tracks and/or facilities has never been considered as work belonging exclusively to maintenance of way employes.

At the time the work complained of was performed by other employes of the C&NW, claimants were fully engaged in the performance of similar work on other trackage included in their seniority district.

OPINION OF BOARD: The parties are in agreement that in the latter part of 1960, the former Minneapolis and St. Louis Railway Company merged with the Chicago and North Western Railway Company. Thereafter, both lines were operated by the C&NW Railway Company, but the separate effective Agreements with the Organization were continued.

On the various dates alleged in the claim, the Carrier assigned C&NW section forces to remove snow and ice from M&StL Division tracks and switches at New Ulm, Minnesota. The C&NW section forces who were assigned to perform the disputed work on the M&StL Division did not hold any seniority on the latter line under the effective Agreement. Claim was thereafter filed by the Organization on behalf of the M&StL Division employes, which was duly declined.

The substance of the Carrier's declination was grounded on three defenses — namely, that an emergency situation existed, the practice, and that Claimants were not available. In support of one facet of its position, the following pertinent portion is quoted from the Carrier's ex parte submission.

> "It has been the practice on the M&StL, as well as the rest of the C&NW, to call regular section forces for snow and ice removal from the tracks of the railway company as weather conditions necessitate such removal. Maintenance of way forces so-called have been supplemented as necessary, depending upon the severity of the storms and amount of snow and ice to be removed. Such supplementing has been done through any available source, including the use of other employes of the carrier and the hiring of outside snow shovelers." (Emphasis ours.)

It is elementary that there is an etymological distinction between **supplementing** or augmenting and **substituting**. In the former, we add to something: in the latter, we put in place of something. Hence, the practice of supplementing Maintenance of Way forces does not encompass eliminating these forces, which occurred in the instant dispute.

In addition, the Carrier contended that pursuant to various Awards of this Board, it could, under emergency conditions, utilize other than track department employes to perform the work of snow removal from switches. We whole heartedly endorse this principle which we have previously enunciated (See Awards 10829, 4593, 4948, 5875, and others). However, concomitant with

this principle is the requirement that a **bona fide** emergency exist, and as we stated:

> "In emergencies, of course, section men may be augmented by other available employes. * * * " (Award No. 4593)

We repeat, augmenting does not mean substituting or replacing; and merely alleging an emergency, does not **ipso facto** establish an emergency. In fact, the Carrier argued that, at the time, the Claimants were fully engaged in performing similar work on other trackage included in their seniority district — routine maintenance work. We do not envision routine maintenance work to signify an emergency by any stretch of the imagination — whether it be in Minnesota or Florida or Texas.

Lastly, the fact that the Claimants were fully employed at other work is not a valid defense to the Claim (See Award Nos. 4869, 4158 and 5090).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinons, this 12th day of April 1966.

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