

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23310
Docket Number MW-23124

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it used Assistant Roadmaster Schmittou to clean snow from switches at Scranton, North Dakota on January 5, 1978 (System File C#28/D-2172).

(2) Furloughed Section Laborer O. T. Thompson shall be allowed eight (8) hours of pay at the section laborer's straight-time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Carrier utilized an Assistant Roadmaster to clear snow from switches on January 5, 1978. The Organization asserts that it should have recalled and assigned the Claimant - who had been furloughed on December 2, 1977 - to perform the labor, inasmuch as he was available at his home and the Carrier has not questioned his availability.

The Carrier has relied upon an assertion that an emergency existed; but in its submission here, the General Chairman has cited Awards to support the contention that a mere allegation of an emergency does not establish one, and he concludes that the Carrier has the burden of presenting evidence of an emergency.

While certainly we agree that one party may not merely assert a condition to be the case and expect us to accept that assertion without further proof. However, in this case as the matter was presented on the property, we find in the initial declination that the Carrier asserted that the area in question was experiencing blizzard snow conditions, and therefore the work would be classified as emergency. At no time while the matter was under review on the property did the Organization contest that the area was experiencing blizzard conditions, even though that assertion was repeated in the Carrier's correspondence.

It would be highly inappropriate under those circumstances to now permit the Organization to assert that the Company has failed to establish its burden in this regard. When a statement is made that an area in North Dakota, in mid-January, is experiencing blizzard snow conditions and that assertion is not challenged or denied, we feel that a Carrier has established its burden of showing an emergency.

Based upon the authority of Third Division Award 22755 and others, we will deny the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1981.

