

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36421
Docket No. MW-35649
03-3-99-3-581**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the carrier failed to recall furloughed District 13 Machine Operators R. F. Broers and D. R. Stinar to fill new machine operator positions (operate Jordan snow plow) at Crookston, Minnesota beginning January 10, 1997 and continuing (System file T-D-1434-H/MWB 97-12-09AK BNR).**
- (2) The Agreement was violated when the Carrier failed to recall furloughed District 13 Machine Operators J. L. Dale and D. H. Brotten to fill new machine operator positions (operate Jordan snow plow) at Grand Forks, North Dakota beginning January 11, 1997 and continuing (System File T-D-1435-H/MWB 97-12-09AL).**
- (3) The Agreement was violated when the Carrier failed to recall furloughed District 15 Machine Operators J. S. Dosch and L. A. Martin to fill new machine operator positions (operate Jordan snow plow) at Minot, North Dakota beginning January 11, 1997 and continuing (System file T-D-1436-H/MWB 97-12-09AM).**
- (4) As a consequence of the violation referred to in Part (1) above, Machine Operators R. F. Broers and D. R. Stinar shall now each receive pay for eight hours each work day, Monday through Friday beginning January 10, 1997 until such time they are recalled, or the positions are filled by a bulletined assigned employee. We further request that Claimants receive pay equal to any and all overtime**

paid Mr. Johnson and Mr. Widrig during claimed period of time, and that Claimants be accredited for any and all other benefits, vacation and lump sum payment accreditation, accreditation for Feb. 7, labor protection, insurance, retirement and unemployment payments.'

- (5) As a consequence of the violation referred to in part (2) above, Machine Operators J. L. Dale and D. H. Brotten shall now each receive pay for eight hours each work day, Monday through Friday beginning January 11, 1997 until such time they are recalled, or the positions are filled by a bulletined assigned employee. We further request that Claimants receive pay equal to any and all overtime paid Mr. Betting, Carlson, Jarombek and Zabel during claimed period of time, and that Claimants be accredited for any and all other benefits, vacation and lump sum payment accreditation, accreditation for Feb. 7, labor protection, insurance, retirement and unemployment payments.
- (6) As a consequence of the violation referred to in Part (3) above, Machine Operators J. S. Dosch and L. A. Martin shall now each receive pay for eight hours each work day, Monday through Friday beginning January 11, 1997 until such time they are recalled, or the positions are filled by a bulletined assigned employee. We further request that Claimants receive pay equal to any and all overtime paid the operators of the plow, during claimed period of time, and that Claimants be accredited for any and all other benefits, vacation and lump sum payment accreditation, accreditation for Feb. 7, labor protection, insurance, retirement and unemployment payments."

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.

The winter of 1996 - 1997 was particularly harsh in the central plains states of North Dakota, South Dakota and Minnesota. Snow started to fall in mid-November 1996 and continued through early April 1997. There were eight blizzards that winter which deposited over 100 inches of snow in some parts of these states.

In an effort to keep its right-of-way in service and limit traffic interruptions over its property in the central plains, the Carrier assigned Sectionmen, Machine Operators, Truck Drivers and Foremen to snow removal duty. Some of these employees operated a snow dozer. Other employees operated a snowplow while still other employees shoveled snow.

On March 7, 1997, the Organization filed a claim on behalf of Group 3 Machine Operators J. L. Dale and D. H. Brotten both of whom had been furloughed in December 1996. The Organization contends that these furloughed employees should have been recalled to service beginning January 11, 1997, to operate Jordan snow dozers at Grand Forks, North Dakota. Rather than recall the Claimants, the Carrier assigned a Machine Operator, a Sectionman, a Foreman and a Truck Driver to snow removal duty, according to the Organization.

On March 7, 1997, the Organization also filed claims on behalf of Group 3 Machine Operators J. S. Dosch and L. A. Martin both of whom had been furloughed in December 1996. The Organization argues that these furloughed Machine Operators should have been recalled to service beginning January 10, 1997, to operate Jordan snow dozers at Minot, North Dakota. Rather than recall the Claimants, the Organization maintains that the Carrier assigned a Truck Driver and Sectionmen to snow removal duty.

On March 7, 1997, the Organization filed a third claim on behalf of Group 3 Machine Operators R. F. Broers and D. R. Stinar both of whom it claims had been furloughed in December 1996. The Organization asserts that these furloughed employees should have been recalled to service beginning January 10, 1997, to operate Jordan snow dozers at Crookston, Minnesota. Rather than recall the Claimants, the Carrier assigned two Sectionmen to snow removal duty at Crookston on a continuous basis, according to the Organization.

The Carrier denied the three claims filed on March 7, 1997, contending that snow accumulation had created an emergency situation throughout the central plains states during the winter of 1996 - 1997. When Sectionmen, Truck Drivers, Foremen and Machine Operators were assigned to operate snow removal equipment throughout this territory no employees were recalled from furlough, the Carrier avers, because it was not anticipated that employees would be assigned to operate this equipment in excess of 30 days.

The Organization appealed the three claims on the property and they were consolidated into one case when they were submitted to the Board.

I. TIME LIMITS

Rule 42.A. of the parties' Agreement requires claims or grievances to be presented in writing within 60 days of the occurrence on which the claim or grievance is based. The Carrier contends that the three March 7, 1997 claims were untimely since they were presented well after 60 days of November 1996, when Sectionmen, Truck Drivers, Foremen and Machine Operators were first assigned to snow removal equipment.

The three claims presented on March 7, 1997 allege a continuing violation of Rule 9 of the parties' Agreement, in the Board's opinion. The Organization is contending that the Claimants should have been recalled from furlough beginning January 10 or 11, 1997, and continuing throughout that winter. This is certainly an alleged continuing violation of their purported rights under Rule 9. As such, Rule 42.D. governed their claims. Pursuant to Rule 42.D. the March 7, 1997 claims were timely presented. However, no monetary relief may be allowed the Claimants for more than 60 days prior to March 7, 1997 in accordance with the clear terms of Rule 42.D.

II. MERITS

No "new positions" were established during the winter of 1996 - 1997 to operate snow removal equipment at Minot, Grand Forks, or Crookston, in our opinion. Indeed, the three claims are predicated on currently employed Sectionmen, Truck Drivers, Foremen and Machine Operators being assigned snow removal duties. Clearly, these were not new positions.

Unquestionably, the Carrier was entitled to some latitude due to the severity of the snowfall during the winter of 1996 - 1997. However, at some point that winter the Carrier should have realized that snow removal in the central plains states would be virtually constant. In fact, when the Carrier denied the appeal of Machine Operators Broers and Stinar it acknowledged that Sectionmen Johnson and Widrig had been thrust into continued snow removal service.

The Organization contends that beginning on January 10 and 11, 1997, the Carrier should have anticipated that snow removal would last more than 30 days and we agree. By this time, there had been four blizzards in the central plains states. Accordingly, the Carrier should have realized that snow removal would be continuous that winter and it therefore should have recalled the Claimants to operate Jordan snow blowers. Their rights under Rule 9 were violated when they were not recalled from furlough, in the Board's opinion.

III. DAMAGES

The Claimants are entitled to eight hours' pay each day beginning on January 10 or 11, 1997, until Sectionmen, Truck Drivers, Foremen and Machine Operators were no longer assigned to snow removal in the central plains states. Naturally, they are not entitled to any compensation on days that they were working or on days that snow removal was not performed. Moreover, only the most senior Machine Operator at Minot, North Dakota, is entitled to compensation because the Organization was able to identify only one employee (Truck Driver J. Faul) who was assigned to snow removal equipment at Minot.

AWARD

Claim sustained in accordance with the Findings.

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 17th day of March 2003.