

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36524
Docket No. MW-35386
03-3-99-3-260

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned and used District 11 Track Inspector D. Bobby and District 11 Group 4 Machine Operators R. Kienow and R. W. Erickson to perform service of plowing snow on Seniority District 14, instead of assigning the Claimants to perform the subject work on January 2, 1997 (System File T-D-1280-H/MWB 97-04-23AG BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Foreman V. J. Middlestead shall ‘ . . . receive pay for eight (8) hours straight time and six (6) hours time and one half rate, to be paid at his respective rate of pay. ***’ and Machine Operators K. L. Dallman and J. J. Nogowski shall each ‘*** receive pay for eight (8) hours straight time and six (6) hours time and one half rate, to be paid at the rate of pay for Group 3 machine operators.’”

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 Organization alleges that on January 2, 1997, the Carrier violated the Agreement when it directed employees from Seniority District 11 to plow snow on Seniority District 14. As the Claimants assemble in the same facility and location, the Carrier's misuse of employees who possess no seniority in District 14, removed work opportunity from those employees who had the Agreement right to perform the work.

The Carrier defended its position by arguing that it had a snow emergency. It further argued that it was not possible within the Agreement or under the extant conditions to have made assignment as the Organization argues. Further, the Claimants were fully employed, working significant overtime during the same time of this claim.

The Board studied the record and the Carrier's affirmative defense of a snow emergency. We also reviewed the Awards presented by the Organization in support of its claim. Third Division Award 20891 on this property indicates no emergency. Third Division Award 21678, which is also on this property, states that "Carrier has not in our judgement made out a persuasive case that emergency conditions prevailed which would warrant a relaxation of the general principles respecting seniority rights in seniority districts." The other Awards similarly do not include the proof of immediacy necessary to support an emergency (for example, Third Division Awards 21222, 21224).

In this instant case, the Carrier provided a statement from Roadmaster Ostberg which stated in pertinent part:

"... as extreme, severe and emergency conditions did prevail for most of January & February. Time was of the essence. The snow plows had to be prioritized by the demands of marketing. You could not establish any form of pattern or routine to which you could maintain snow plow operators from all districts that needed to be plowed. There was a need for plowing everywhere - all the time. As one subdivision became 'hot' due to revenue cars sitting for a long period of time, all efforts would be swung that way to get those cars moving. While we were doing that, not only did mother nature try to drift the line back in while we were plowing it, but the other

lines where we weren't was drifting in deeper and deeper making the restoration of those lines even tougher when we got to them."

What is clear in this record is that the Organization did not rebut the emergency with any probative evidence. The Organization simply stated that it rejected the defense or that the "conditions did not warrant the Carrier's action." The Board does not agree. The Board must conclude that on January 2, 1997, the Carrier provided sufficient evidence that it had an existing emergency. As indicated in a dispute on this property, "... the right of the Carrier to respond to emergency situations by use of available employees is well established." (Third Division Award 28683) Accordingly, this claim must be denied (see also Third Division Award 31086).

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 23rd day of April 2003.