

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39721
Docket No. MW-39026
09-3-NRAB-00003-050242
(05-3-242)

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

(Brotherhood of Maintenance of Way Employes Division
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Belt Railway Company of Chicago

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Collins and/or Corman) to perform Maintenance of Way work (remove/clean snow from turnouts and roads) on BRC (Belt Railway Company of Chicago) territory on January 4, 5, 6 and 7, 2004 (System File BRC-6855T).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman proper advance notice in writing of its intention to contract out the work in question or make a good faith effort to reach an understanding in accordance with Rule 4 and the November 15, 2002 Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above “each member of the Brotherhood of Maintenance of Way Employes employed on the BRC shall be compensated an equal and proportionate share of the 129 overtime hours worked by the contractors.”**

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 protested subcontractors performing the snow removal work described above by presenting a claim to the Carrier.

The Organization maintains that the instant work of removing snow from tracks, switches, fire roads, walkways and parking lots was work historically, traditionally and customarily performed by BMW-E-represented employees. Rather than notify Organization members who were on their rest day, the Carrier utilized contractors for snow removal. Rule 4 requires that the Carrier provide advance notice of plans to contract out work. Further, the Carrier's claim of a snow emergency is not supported by evidence, only assertions.

The Carrier contends that it was not required to provide notice of the subcontracted snow removal because it was part of a snow emergency. The Claimants were fully employed and the subcontractors ceased working when the snow emergency ended. The Carrier cites to Third Division Awards 37024 and 37025 for the proposition that severe weather events are not foreseeable and cannot be the subject of the Rule 4 notice requirement for subcontracting.

The Board carefully reviewed the evidence and it is undisputed that the Carrier used two subcontractors to assist Carrier employees with snow removal. The Carrier did not provide notice to the Organization of the subcontracting.

During the handling on the property, the Carrier provided climatological data showing snowfall of 5.6 inches on January 4, followed by temperatures on January 5 and January 6 below five degrees Fahrenheit as the daily lows. The data also indicates wind gusts ranging from 18 to 33 mph during the period of January 4 through 7.

The Organization argues that an emergency snowfall condition did not exist from January 5 through 7, because there was not additional snowfall. However, a review of the climatological data indicates that the temperature dropped precipitously and the wind was gusting over 30 mph. In Third Division Award 37025, the Board held:

“It is well settled that genuine emergency situations with relatively sudden onset excuse Carriers from advance notice requirements. Such emergency situations also excuse any Agreement prohibitions on the contracting of work to permit the rapid augmentation of its own forces in recovery efforts.”

Although the Organization disagrees with the duration of the snow emergency, and even whether a snow emergency could actually be declared for less than six inches of snow in January in Chicago, a careful review of the record indicates that the Organization has not refuted the characterization by the Carrier that a snow emergency existed.

Rule 33 (d) entitled “Starting Time” allows the Carrier to change starting times for employees in emergency conditions “such as floods, snowstorm, hurricane, tornado, earthquake fire or other disaster.” Employees can then be placed on 12 hour shifts for the duration of the emergency. Rule 33(d)(4) provides that “When the Carrier determines that the emergency condition no longer exists, any employees will revert back to their regular starting time.” Under this Rule, the Carrier has discretion to determine when an emergency weather condition exists.

Third Division Award 37024 reminds that, while most work can be planned in advance and notice can be given, recovery work is, by its very nature, sudden and made necessary by unforeseen events. The instant snowstorm was not known to the

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Carrier in time to provide the Organization with a 15-day advance notice pursuant to Rule 4. Rule 33(d)(4) provides the Carrier with the discretion to determine when the weather emergency has ceased.

Emergency situations of sudden onset generally excuse Carriers from advance notice requirements and prohibitions from contracting of work in order to permit the augmentation of the workforce during emergencies. The facts of the instant matter establish such a situation.

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 26th day of June 2009.