

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40076
Docket No. MW-40572
09-3-NRAB-00003-080386**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(Union Pacific Railroad Company (former Chicago and
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Con-Struct and Roterd) to perform Maintenance of Way and Structures Department work (snow removal) at right of way roads at control points at Mile Posts 195, 217, 224, 225 and 236 on March 3, 2007 and at 13th St., 16th St. and 19th St. crossings in Grand Prairie Junction, Iowa on March 6, 2007 (System File R-0701C-307/1471346 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance notice of its intent to contract out the aforesaid work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1(b) and Appendix 15.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants L. Jackson, W. Lee and A. Staker shall now *** each be compensated for eight (8) hours of overtime for March 3rd and Claimant Jackson must be compensated for an additional five (5) hours of straight time for March 6th, for work that the contractor’s forces spent performing their work, at the applicable rates of pay.”**

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.

Due to a snowfall, on the dates set forth in the claim, the Carrier utilized outside forces for snow removal at the locations set forth in the claim.

According to Manager Track Maintenance J. Biggerstaff, outside forces were:

“ . . . asked to remove snow to keep the railroad operational during a snow storm. All of the U.P. equipment was being used 24 hours a day at this time. The skid loader at Grand Jct. was brought in account of public safety where cars were getting stuck on the tracks and all the U.P. equipment was working elsewhere.”

The Organization asserts that the Carrier improperly contracted out scope covered work. The Carrier defends asserting an emergency existed and its obligations under Rule 1(B) to give prior notice of contracting out scope covered work is excused “ . . . in ‘emergency time requirements’ cases.”

Third Division Award 20527 sets forth the standard for an “emergency:”

“We have heretofore defined an emergency as ‘an unforeseen combination of circumstances which calls for immediate action’ (Award 10965). . . . [I]t is well established that the Carrier, in an emergency, has broader latitude in assigning work than under normal circumstances; in an emergency Carrier may assign such employees as

its judgment indicates are required and it is not compelled to follow normal Agreement procedures.”

And, as discussed in Third Division Award 32862, “. . . [t]he burden rests with the Carrier to demonstrate the existence of the emergency.”

Snowstorms in Iowa in March are not unusual. But where, as here, the storm was of such a nature that cars were getting stuck on the tracks and the Carrier’s equipment was being used 24 hours per day at other locations, it is fair to conclude that the Carrier met its burden to show that an emergency existed on the dates in question. The Carrier, therefore, had broader latitude in assigning work than under normal circumstances; in an emergency the Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures. The Carrier has sufficiently shown in this case that it had to use outside forces to keep the railroad running without delay.

This claim shall therefore be denied.

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 19th day of November 2009.