

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40079
Docket No. MW-40702
09-3-NRAB-00003-080499**

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 (Rossi Construction and Central Railway) to perform Maintenance of Way and Structures Department work (snow removal) at switches in the Hump Yard area of the Proviso Yards on February 13, 2007 (System File S-0701C-355/1474916 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).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Alexander, A. Ayala, D. Bragg, M. Corral, M. Carrasco, R. Carreon, J. Guzman, R. Perez, R. Preciado and A. Orozco shall now each be compensated for thirteen (13) hours at their applicable time and one-half 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.

On February 13, 2007, the Proviso Yards in the Chicago area experienced a heavy snowfall. Historical weather data from an internet site provided by the Carrier shows that on that day, nine inches of snow fell in the area. On that date, the Carrier supplemented its forces with five employees from an outside contractor (Rossi Construction) and five employees from Central Railway who rendered 13 hours of service each (for a total of 130 hours) to keep switches clear in the Hump Yard area of Proviso Yards.

According to Manager Track Maintenance J. Goben:

“[D]uring the snow all employees that were laid [off] that could be contacted were called back to work. All employees in claim were [sic] working and were on shifts of 12 on and 12 off, for their own safety they needed time off for rest. [E]xample Mr. Alexander worked 8 hours with 8 hours OT and Mr. Orozco worked 8 hours with 9 hours OT on the 13th of Feb.”

The Organization asserts that the Carrier improperly contracted out scope covered work. The Carrier defends asserting an emergency existed.

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.”

As the Organization argues, heavy snowfalls in February in the Chicago area are not unusual. But a nine inch snowfall which kept the Carrier's forces working as many hours as they did (shifts of 12 hours on and 12 hours off and some with more overtime) which still proved insufficient to perform the work to the extent that ten more employees from the contractor and the Central Railway had to be called in certainly goes beyond what could reasonably be expected even for the Chicago area in February.

The conditions caused by the snowfall on February 13, 2007 constituted an emergency. Manager Track Maintenance Goben states that ". . . during the snow all employees that were laid off that could be contacted were called back to work." This is, therefore, a case where an emergency existed; the Claimants worked extended shifts; laid off employees were contacted to report to work; and, because of the emergency, the Carrier had the latitude to assign work to strangers to the Agreement. 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.