

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40488
Docket No. MW-39534
10-3-NRAB-00003-060305
(06-3-305)**

The Third Division consisted of the regular members and in addition Referee Daniel F. Brent when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (Swain Construction) to perform Maintenance of Way work (snow removal) at Gibson Yard in Omaha, Nebraska on January 27, 28 and 29, 2004 [System File C-04-C100-73/10-04-0225(MW) BNR].**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman advance written notice of its plans to contract out the above-described work as stipulated in the Note to Rule 55 and Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants K. Kendall and G. Fabian shall now each be compensated for twenty-four (24) hours at their respective straight time rates of pay and for sixteen (16) hours at their respective 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.

The instant case involves the Carrier's failure to give advance notice to the General Chairman before using contractors to dump piles of snow in the Gibson Yard at Omaha, Nebraska, on January 27, 28 and 29, 2004. The Carrier contends that this was an emergency situation. However, the Organization contends that the snow had already been plowed and moved after the snowstorm in a manner that permitted train movement within the yard, and that the contractor's dump truck was simply removing piles of accumulated snow from the yard.

The Agreement contains a Truck Driver classification. After a substantial snowfall, the Carrier determined to move snow from one portion of its property to another portion of its property. As the Organization aptly contends, Hertz and other rental companies had dump trucks suitable for this purpose readily available, and such equipment could have been rented as contemplated by the Agreement. Moreover, because the snow had been stockpiled from an earlier snowstorm, its removal from the Carrier's premises did not constitute a true emergency. Moreover, heavy snowfall in Nebraska during the winter is not an unexpected event.

Because no attempt was made to assign the disputed work to bargaining unit employees who were available and qualified to perform the work, which is within the scope of their job classification, the Carrier violated the Agreement when it assigned outside forces to perform the snow removal. The Agreement was further violated when the Carrier failed to provide the General Chairman advance written notice of its plans to contract out the above-described work as stipulated in the Note to Rule 55 and Appendix Y. Consequently, Claimants K. Kendall and G. Fabian shall be compensated for 24 hours at their respective straight-time rates of pay and for 16 hours at their overtime rate of time and one-half as a result of this violation.

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AWARD

Claim sustained.

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 15th day of June 2010.