

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41047
Docket No. MW-41152
11-3-NRAB-00003-090447**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (former Chicago &
(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 Contractors) to perform Maintenance of Way and Structures Department work (cribbing switches, pumping water and removing ice from switches and track) at the Proviso Yard on February 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 27, 28, 29 and March 1, 2008 (System File B-0801C-106/1503151 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 S. Duda, F. Galazkiewicz, J. Alexander, O. Juarez, C. Rapier, J. Duarte, F. Castellanos, D. Johnson, M. Carrasco, M. Corral, R. Carreon, R. Preciado, R. Perez, J. Guzman, A. Orozco, B. Ayala, D. Williams and I. Torres shall now each be compensated at their respective rates of pay for an equal share of the three thousand two hundred

sixty-eight (3,268) man-hours expended by the outside forces in the performance of the aforesaid work.”

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.

This claim concerns the use of an outside force (Rossi Contractors) to remove snow and ice from switches and tracks during the period of February 10 through and including March 1, 2008, at the Proviso Yard. The work also consisted of the constant elimination of all freestanding water around both the tracks and switches that resulted from melting snow. The water became a problem for railroad operations because any drop in temperature caused it to refreeze and rendered the yard switches inoperable.

It is the position of the Organization that the clearing of snow and ice in this instance was not an emergency because the cause for the work was the result of an accumulated buildup as opposed to a surprise massive snowstorm. According to it, the reason why the Carrier had use for an outside contractor was because it had laid off Maintenance of Way forces when it was snowing during the period of January 10 through 21, 2008, i.e., forces that could have removed snow during that period if they had not been laid off and effectively reduced the ice accumulation, thus not requiring the need for any outside forces. It asserted that no “emergency” condition existed and the Carrier should have provided the Organization the required 15-day advance notice of its intent to contract out the disputed work. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that extreme winter weather was the reason why a contractor was used to assist its forces to handle the work in question. It further argued that all available forces were working as much regular and overtime hours as possible. In fact, they were working 12 hours on and 12 hours off to rest. In addition, every contractor group had a BMW-employee flagging for them. It asserted that this was an emergency situation and the Organization is aware that when faced with such conditions, numerous Awards have determined that carriers have a more liberal right to assign work to outside forces without the usual 15-day advance notice. It closed by stating there was no violation of the Agreement and it asked that the claim remain denied.

The Organization's argument is based upon the premise that the Carrier laid off an excessive number of employees during the period of January 10 through 21, 2008, and if it had not laid off those employees there would have been no need for the outside contractor during the time-period covered by the claim because the snow and ice would not have accumulated. On its face the argument is plausible, but the problem for the Board is no convincing evidence was proffered to demonstrate that during the timeframe employees at Proviso Yard were laid off, sufficient work still existed that required their services. For example, there are no statements from employees who were working in Proviso Yard during that period which stated that the snow and ice was piling up and switches and tracks were inoperable, or there was no weather emergency between February 10 and March 1, 2008, whereas there is a written statement from Manager Track Maintenance J. Gorben which stated:

“Section crews at Proviso where working 12 on 12 off hours during extreme weather with all people laid off called back to work. Contractors were called in to help Maintenance of Way forces in the weather emergency, each contractor group had a Maintenance of Way employee flagging for them.” (Emphasis added)

The MTM's statement that the need for outside contractor assistance, as well as the recall of Maintenance of Way employees, was due to the extreme weather conditions which arose during the claim period was not effectively rebutted. Many Awards have upheld the Carrier's right to respond to emergency conditions, such as recent Third Division Award 40924 involving the same parties to this dispute. In that Award the Board stated:

“It is well established by arbitral precedent that when a Carrier is faced with an emergency situation it is afforded greater latitude in the assignment of its employees to accomplish necessary work. . . .”

That same reasoning is applicable in this instance as well. Consequently, the Board finds and holds there was no significant argument and/or proof to rebut the MTM's statement that the need for the outside contractor arose as a result of the extreme weather conditions that occurred during the claim time period. As previously stated, the Carrier is afforded broader discretion in the assignment of work during an emergency and, in this instance, we are persuaded that those conditions did exist. Therefore, the Board finds and holds that the claim must remain 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 23rd day of August 2011.