

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41476
Docket No. MW-41135
12-3-NRAB-00003-090500

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(CP Rail System/Delaware and Hudson
(Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (New Century Construction Company) to perform Maintenance of Way work (bridge repair and related work) on the railroad bridge over Pangburn Road in Princeton, New York on November 29, 2007 instead of B&B employees D. Welch, L. Martin, T. Delameter, R. Holleran, E. Carr, B. Allmendinger, J. Perry and J. Moelder (Carrier's File 8-00599 DHR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Welch, L. Martin, T. Delameter, R. Holleran, E. Carr, B. Allmendinger, J. Perry and J. Moelder shall now each be compensated for ten and one-half (10.5) 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.

On November 29, 2007, a semi-trailer transporting a crane struck and severely damaged the Pangburn Road overpass at Mile Post 490.83 on the Freight Main Subdivision. Upon notification of this situation, the Carrier placed crews in Oneonta and Binghampton on standby while it assessed the damage. An inspection revealed that there was extensive damage to the bridge span and girders, which rendered the track impassable. The mainline was closed during the time that outside contractor forces repaired the bridge and overpass.

On December 10, 2007, the Organization filed a claim asserting that BMW-employees were ready, willing and able to perform the claimed work, but the Carrier violated Rules 1, 3, 4, 11, 28 and Appendix H when it "sent home their B&B Employees and opted to have a contractor perform their work."

On January 11, 2008, the Carrier denied the claim as follows:

"An emergency situation occurred at approximately 1240/29 ET when a semi-trailer transporting a crane struck the overhead railway bridge at MP 490.83 of the Freight Main subdivision. Inspection discovered extensive damage to the bridge span and girders. As a result, the mainline was closed for approximately 20 hours.

Repairs were planned using bridge material from an abandoned bridge near this location which was previously double track. These repairs needed to be completed on a timely basis in order to open the mainline.

The B&B Crew were notified of the incident and placed on hold until the situation could be assessed and a determination made as to whether the available manpower was sufficient to complete the work within the tight timeline given the emergency situation.

At 3:30 PM the crew was released after it was determined that they could not complete the emergency work in the time required.

* * *

To further clarify, we did not place our employees on standby until notifying a contractor to perform the work. Rather, we placed our employees on standby until the emergency situation could be assessed and a determination made as to whether the available manpower was sufficient to complete the work in the tight timeline [E]mployees were released from hold and allowed to go home after completing their regular work day. The employees were not released from duty, nor placed on furlough[.]”

On March 11, 2008, the Organization appealed the claim denial. Therein it observed “that this incidence was an emergency . . . which we have conceded,” but BMW “does not accept nor condone the Carrier’s actions surrounding the matter. . . . Regardless of the circumstances and need for a specialized crane notwithstanding, the Carrier’s force” has historically performed this work. The only reason the Carrier placed force employees on standby, the Organization asserts, was not to assess the damage, but rather to determine if contractor forces could be obtained to perform the claimed work.

The Carrier denied the appeal on May 7, 2008 and this matter was discussed during a conference held on August 22, 2008. Having been handled in the usual and customary manner on the property, including up to and including the Carrier’s highest designated officer, the claim is now before the Board for final adjudication.

Notwithstanding the finding that the claimed work is scope-covered, there is no dispute that the incident constituted an “emergency” as that word is used in Rule 1. When an “emergency” exists, a Carrier is accorded flexibility in its response because

time is of the essence. For example, notice and conference requirements are effectively suspended.

Given these findings, the Organization has not established a violation of any Rules as alleged.

Therefore, the Board will deny the claim in accordance with the precedent established in on-property Third Division Award 37288 wherein an “emergency” existed and allegations of Rules violations were set aside.

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 13th day of December 2012.