

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41741
Docket No. MW-41649
13-3-NRAB-00003-110113**

The Third Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it directed and assigned Welder J. Peterson instead of regularly assigned Truck Operator G. Pfau, to operate a truck to follow a snow plow on February 15 and 16, 2009 (System File C-05-09-060-03/8-00219-156).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Pfau shall now be compensated for a total of eight (8) hours at his respective straight time rate of pay and for nineteen (19) hours at his respective time and one-half rate 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 Board notes at the outset that this claim is a companion claim to Third Division Award 41740. We further note that while the dates of claim in this case differ from the date of claim in the companion case, the circumstances of a snow emergency are identical and the arguments asserted by the Organization and the Carrier respectively are also identical.

Claimant G. Pfau established and maintains seniority in the Track Sub-department and at the time of this dispute (February 15 and 16, 2009) he was assigned and working as a Material Truck Driver headquartered in Minot, North Dakota, under the supervision of Track Maintenance Supervisor (TMS) T. Kroll, whose territory covered the Portal and Newtown Subdivisions. The Carrier notes that neither Sunday, February 15, nor Monday, February 16 (President's Day - a recognized holiday by Canadian Pacific) was a regularly scheduled work day.

On the two dates in question, according to the Carrier, a "snow emergency" occurred due to blowing and drifting, which resulted in snow drifts along its tracks between Mile Posts 419 and 467 on the Newtown Subdivision from Drake, North Dakota, to Max, North Dakota, making the track impassable and, in turn, resulting in a temporary suspension of train operations. It is undisputed in the record that Track Sub-department employees regularly assigned to the Newtown territory (as was the Claimant) maintain the pertinent work class seniority and territorial rights to be assigned the subject work at issue here.

The heart of this claim (like the companion claim discussed in Award 41740) is whether the Carrier adhered to its contractual obligation under Rule 11 (f) of the controlling Agreement to expend an effort to call the Claimant to perform Truck Driver duties associated with the snow removal work involved on the two claim dates in question. Unlike in the companion claim, where it was determined that the Carrier was at a complete loss as to the reason why the Claimant was not among the employees called to perform the snow emergency work, in the instant claim, sufficient record evidence supports the Carrier's position that it did call the Claimant to perform the

work at issue in accordance with its contractual obligation to do so as set forth in Rule 11 (f) but that the Claimant failed to answer the call and make himself available. As a result, the Claimant and not the Carrier must bear the result of a lost work opportunity. Accordingly, we rule to deny the subject claim.

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 30th day of September 2013.