

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42125
Docket No. SG-42212
15-3-NRAB-00003-130078**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railroad Signalmen**
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of E. Bjugstad, T. S. Brossard, K. D. Dawson, J. J. Eull, M. Eull, R. L. Gysberg, A. A. Halvorson, P. S. McGlynn, P. S. Meszaros, D. R. Morrison, R. J. Peterson, R. W. Olson, A. W. Branke [Graunke], and B. M. Berrine [Perrine], for an equal share of 135 hours at the overtime rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 1, 2, and the Contracting Agreement of March 30, 2007, when on June 22, 2011, it allowed 15 employees of an outside contractor, Railroad Controls Limited, to perform work at Minot, North Dakota, Soo Tower Interlocking and at various locations on the Glasgow and KO Subdivisions, thereby causing the Claimants a lost work opportunity. Carrier's File No. 35-11-0043. General Chairman's File No. 11-034-BNSF-154-TC. BRS File Case No. 14741-BNSF.”

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.

In the summer of 2011, the entire Midwest region experienced unprecedented flooding by the Missouri River, due to unusually heavy rainfall in the Rocky Mountains. At the time of the events giving rise to this claim, the Claimants held various Signal positions on the Dilworth, Minneapolis, St. Cloud, and Twin Cities Signal Crews on the Twin Cities Subdivision, Twin Cities Region. This claim developed on June 22, 2011, when the Carrier used 15 employees from an outside contractor, Rail Controls Limited (RCL), to temporarily move signal equipment to safety in preparation for an impending flood in the Twin Cities Region. The equipment was located at Soo Tower Interlocking in Minot, North Dakota, and at various locations on the Glasgow and KO Subdivisions.

According to the Carrier, the flooding presented an “emergency” under the Parties’ Agreement that permitted it to use a contractor to perform the work without advance notice to the Organization. The Organization contends that there was no emergency, in that the impending flooding in Minot, North Dakota, had been national news for weeks before the work at issue was performed. The Carrier had ample time to plan for moving any equipment to safety and, in fact, had drawn up detailed plans for removal of the equipment that included task assignment sheets prepared by supervision that were used to determine the signal locations, the number of RCL employees required, the tools they would need to perform the work, and precisely what work they would perform. The work performed by RCL was routine maintenance work, in that in-service signal equipment was temporarily removed from service to protect it from water damage, then reinstalled after the flood waters subsided. In other areas where flooding is common, such as along the Mississippi River, Carrier forces have historically performed this work. The Organization filed this claim by letter dated August, 14, 2011; the Claimants seek compensation at their respective overtime rates for the 135 hours worked by the RCL employees.

The crux of this case is whether the flooding constituted an “emergency” as that term has been defined and interpreted in the Parties’ Agreement. According to the Organization, an emergency is defined as “an unexpected and sudden event that must

be dealt with urgently,” and this event did not meet that definition, in that it was known to exist months in advance. The Carrier noted that its forces had disconnected the equipment in preparation for its removal to dry ground, so that it was not actually in service when it was moved. In response to the Organization’s assertion that the impending flooding had been known for months, the Carrier stated in its October 7, 2011, response to the claim:

“While it is true that knowledge of flooding in the Souris River basin was publicized as early as April 2011, flooding which would impact rail operations in Minot was not publicized until approximately 2314 hours CDT on Monday, June 20, 2011. Amtrak service through Minot, ND, was suspended at 0632 hours on June 21, 2011, seven hours and eighteen minutes after the announcement that rail service would be impacted. BNSF Railway had approximately 54 hours to assess impact, create an emergency plan and execute the plan. Moving the claimants into position and completing the emergency work necessary to protect the BNSF Railway assets would not have been safe or practical. The emergency activities listed in the claim were barely completed prior to the levies being breached. In emergency situations, BNSF can use any resources to keep the track in service.”

During the handling on the property, the Carrier noted that the Claimants were fully occupied hundreds of miles away in other flood response work,¹ and it would not have been possible to get them to Minot in time to remove the equipment at issue here.

The record includes a Flood Timeline prepared by the Ward County Commission Chair on July 25, 2011. The first events on the Flood Timeline occurred in early April 2011. On May 10, 2011, President Obama declared the entire state of North Dakota a major disaster area. On May 31, 2011, the first evacuation map for Minot was distributed to the community at large. For that same date, the Flood Timeline notes:

“River levels are rising much faster than predicted. Although we continue working on the existing dikes, it is not certain that the river will stay within the dikes tonight.

¹ In fact, they all worked overtime during the three days at issue.

We are concerned about the levees being overtopped during the night. Should that occur, the city will sound the sirens and use reverse 911 to alert residents of the emergency situation.

For your safety, we urge everyone in the evacuation zones to find an alternate place to sleep tonight.”

Closer to the date of the work that is at issue in this case, the Flood Timeline notes for June 19, 2011 that:

“Heavy rains in the Souris River Basin in Canada on June 17 and 18 have resulted in substantially increased flows coming in to Rafferty and Boundary Dams. . . . Rain forecasts for Sunday through Tuesday are for 1.25 to 2 inches of rain in the basin. Based on this new information, . . . the dikes on the west side of the City will be raised 2-3 feet and approximately 1 foot on the City’s east side. Although we have approximately 3-5 days to prepare for the crest, residents of the evacuation zones should be prepared for further updates. Since we will be facing new river levels we have not seen before, for your safety, evacuations may be needed again

We are in a very difficult time as we prepare for flows through Minot which will reach 9,700 cfs by Wednesday, June 23, or a level of 1555.1. That is 1 foot higher than our previous crest.” (emphasis added)

On June 20, 2011, mandatory evacuation was ordered for all residents of the City of Burlington and for all residents living in the original Evacuation Zones in Minot. The update for June 21, 2011, stated: “The water is rising fast and people need to get evacuated as soon as possible.” On June 22, 2011: “If you are in any of the mandatory evacuation areas . . . you need to evacuate now.” The Update for June 23, 2011, noted possible projected elevations of water throughout the valley had been raised by two to three feet. It continued: “Unfortunately, the elevations [of the dikes] required within the timeframe provided to protect a majority of the city are no longer . . . attainable.” Photographs of the flood damage in the record show various Carrier locations under feet – not inches – of water, and indicate that in the Minot-Twin Cities

area, service was out for 11 days and did not resume until July 4, 2011. By letter dated June 22, 2011, the Carrier sent notice to the Organization of its intention to use contractors on the Montana and Twin Cities Divisions, starting immediately:

“As you are aware, BNSF is currently experiencing major service interruptions due to flooding caused by the recent winter snow melt and heavy rainfalls in the Midwest, Upper Plains portions of the U.S. and Canada on various subdivisions throughout these respective divisions. BNSF is not adequately equipped with the necessary equipment and manpower to handle this magnitude of outages, meet the needs of its customers, and maintain the current projects already underway. Therefore, BNSF is contracting for removal, transporting, and unloading for storage out-of-service signal equipment in the KO, Devils Lake and Glasgow subdivisions.

Due to the emergency nature of the work, the contractors will begin immediately. BNSF forces are currently performing as much work as possible to maintain the integrity of these locations.”

The record before the Board establishes that the Carrier did have advance notice of the impending flooding in the Upper Plains area in the spring and summer of 2011. It had prepared maps of the areas that would be affected based on projected estimates of the amount of flooding that would occur and had made plans to deal with the water when it came. What the record also establishes, however, is that the flooding was much worse than had been projected. As a result, areas that had been thought safe were not, and the Carrier had to act quickly in order to remove equipment or take other steps to preserve its assets from the flooding.

The Organization argues that the flooding in Minot did not constitute an “emergency” that would justify the Carrier’s use of outside forces without notice. The facts demonstrate otherwise. The Carrier’s advance planning did not anticipate that the Minot area would be flooded, or at least not to the extent that flooding did occur, and it had not planned to remove the equipment that is in dispute here. As the Flood Timeline graphically illustrates, even Ward County kept having to readjust its flood plans as the waters unexpectedly grew higher and higher to unprecedented levels. The Carrier did not receive notice until 11:14 P.M. on June 20, 2011, that rail operations in

Minot would be flooded. Rail service was shut down at 6:32 A.M. the next morning. What this case illustrates is that while the gross outlines of a natural disaster may be known in advance, the particulars in any specific geographic area may not. The Carrier had to act on very short notice to respond to flood waters that were rising higher and more quickly than anyone had anticipated. The Board finds that under the circumstances, the Carrier's use of RCL employees to remove signal equipment in the disputed locations in and around Minot, North Dakota, on June 22, 2011, was justified as an emergency, caused by the unexpected flood levels that had not been, and could not have been, anticipated. Accordingly, the claim must 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 13th day of July 2015.