

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42191
Docket No. MW-41946
15-3-NRAB-00003-120260**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Simons Contracting, Rick Franklin Corporation, Becker Contracting, Hulcher Contracting and Brit Contracting) to perform Maintenance of Way and Structures Department work (removing snow and cleaning right of way) between Mile Posts 257 and 281 on the La Grande Subdivision beginning on December 29, 2010 and continuing through January 2, 2011 (System File C-1152U-152/1549648).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intent to contract out said work or make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52 and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants S. Barnhart, C. Baxter, D. Blaylock, W. Bradford, J. Chandler, J. Cox, J. Decker, J. Guardia, C. Johnston, R. Johlke, C. Lay, J. Minica, M. Reuter and D. Short shall now ‘*** be allowed an equal share of the straight time and overtime hours worked by the outside contracting force as described in this claim, at their respective rates of pay as compensation for the violation of the Agreement. This equates to one hundred sixteen**

(116) hours of hourly compensation now being claimed on behalf of each Claimant. ***”

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 Organization filed this claim after the Carrier called in several contractors to perform snow removal and clean the right-of-way between Mile Posts 257 and 281 on the La Grande (Oregon) Subdivision between December 29, 2010, and January 2, 2011. While removing snow and cleaning tracks are traditional Maintenance of Way work subject to Rule 52 of the Parties' Agreement, there is an exception in Rule 52(a) for emergencies:

“(a) By agreement between the Company and the General Chairman, work customarily performed by employees covered under this Agreement may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of Company's forces. In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less

than fifteen (15) days prior thereto, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company and Organization representative shall make a good faith attempt to reach an understanding concerning said contracting but if no understanding is reached the Company may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith.” (emphasis added)

Rule 52(a) recognizes that emergency situations may require the Carrier to use outside forces to perform work that needs to be done, and “emergency time requirements” are one of the exceptions to the limitations on subcontracting that Rule 52 otherwise imposes. In addition, the notice requirement of Rule 52(a) is waived in an emergency.¹

The evidence in the record, including statements from some of the Claimants, establishes that during the last week of December 2010, a severe winter storm dumped some five feet of snow and ice in the area that required the Carrier to hold a number of trains until the tracks could be cleared. Certainly one can anticipate snow on the La Grande Subdivision in the wintertime, but such extreme weather conditions as five feet of snow cannot be anticipated in advance and clearly present an emergency for the Carrier, which needs to call in outside help to assist its own forces in snow removal so that trains can start running again. The statement from Claimant Robert Johlke described the situation:

“The week after Christmas (December 27th-December 31st), the area from Pendleton to La Grande (and possibly farther east) was hit by a heavy winter snow storm. The whole work week (which was 4 days because of a New Year’s Eve holiday on Friday), section gangs from Pendleton, Gibbon, Meacham, and La Grande tried their best to keep [up] with ever increasing snow depths, and dealt with road closures due to the deep snow and icy conditions. They appeared to be getting the upper hand, up until December 29th. The snow began falling harder, and trains began stalling, and were unable to make the steep grade. Section crews began to fall behind on snow removal, due to

¹ See also, Rule 52(c).

inaccessible freeways and right of way roads that were impassable. . . .” (emphasis added)

Johlke went on to assert that there were UP crews some 25 miles away who could have performed the work done by the contractors. Nonetheless, it is clear that the weather conditions were extremely bad and getting worse, to the point where the section crews could not keep up with the snow removal required to keep the tracks open. Such a situation constitutes an “emergency” under Rule 52(a). Under Rule 52, the Carrier is expressly excused from both the notice requirement and the limitations on subcontracting that otherwise pertain.

The Carrier having established that the circumstances surrounding the work in question constituted an emergency, it did not violate Rule 52 or its notice requirements when it used subcontractors to perform snow removal from December 29, 2010 until January 2, 2011, in the area around La Grande affected by the massive winter storm.

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 28th day of October 2015.