

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42910
Docket No. MW-43136
18-3-NRAB-00003-150392**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
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(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

- “(1) The Agreement was violated when the Carrier instructed senior employe M. Clark to cease performing snow removal work on March 2, 2014 and subsequently assigned junior employe K. Lutz to perform snow removal overtime work beginning at 10:00 P.M. on March 2, 2014 until 3:30 P.M. on March 3, 2014 (Carrier’s File T040914-04TRR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Clark shall now be “... be compensated for fourteen (14) hours time and one-half and three and one-half (3.5) hours double time and all applicable meal periods at his applicable trackmen’s 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.

On March 2, 2014, the St. Louis metro area experienced a major snow storm which resulted in an interruption to scheduled train operations at Madison Yard. In accord with past practice, Carrier responded to the snow emergency by implementing a long-established procedure since at least 1997 by dividing its Maintenance of Way forces into two 12 hour continuous duty shifts for Track Department employees. Carrier explained this procedure is a safety measure taken as an alternative to working employees on a continuous 24 hour to 48 hour shifts.

The facts associated with this claim are not in dispute. Records reflect that on Sunday, March 2, 2014 the Claimant worked the first 12 hour shift plus overtime of two and a half hours and junior employee Lutz worked the second 12 hour shift plus overtime of three and a half 3.5 hours. Carrier explained that while it is company policy to make every attempt to work employees a maximum of 12 hours continuous, under the emergency snow conditions that existed on the claim date of March 2 and into March 3, 2014, additional hours worked by the Claimant and Lutz were necessary to keep trains moving.

Although the claim date here is not the claim dates associated with earlier emergency snow removal work that occurred on January 5, 6 and 7, 2014, nevertheless, other than the difference in dates, the core issue of seniority associated with both claims is identical making this claim a companion case to First Division Award 42908. As a result, our holding in Award 42908 re-stated below is applicable to this claim, to wit:

“We have thoroughly examined Carrier’s assertion that this identical claim arose between the same Parties which was decided in arbitration before Referee Marty Zusman and memorialized in Third Division Award 32183, adopted in August, 1997, and concur in Carrier’s position that, that Award is controlling in this case. In effect, the bottom line of that Award establishes that during snow removal emergencies safety of employees assigned to the work of snow removal trumps contract provisions such as, for example, establishment of fixed shifts that ordinarily would be

applicable to work assignments under conditions other than weather emergencies. Furthermore, Award 32183 noted among other findings that the Organization never before challenged Carrier's procedure of establishing twelve (12) hour shifts due to safety concerns for employees assigned to snow removal work under emergency conditions which resulted in the claim being denied. In other words, the Organization was found to have slept on its rights nearly twenty-one (21) years ago and the Board is not about to overturn Award 32183 by contrary findings premised on identical facts and circumstances. Additionally, to be clear, we also find that Carrier did not under the prevailing circumstances as asserted by the instant claim violate the Claimant's seniority rights in any way. 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 14th day of February 2018.