

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44394  
Docket No. MW-42995  
21-3-NRAB-00003-190375**

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

**(Brotherhood of Maintenance of Way Employes Division  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (Former Burlington Northern  
(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 to perform Maintenance of Way and Structures work (snow removal) at road crossings, signal bungalows and driveways on the Chillicothe Sub between Niota, Illinois and Galesburg, Illinois between Mile Posts 230 and 177 on the Chicago Division on February 26, 2013 (System File C-13-C100-249/10-13-0352 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance notice of its intent to contract out the work referred to in Part (1) above or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 55 and Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants S. Kessler and D. Easley shall each be compensated for two and one-half (2.5) hours= straight time and seven and one-half (7.5) hours= overtime at their respective 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.

In late February 2013, a blizzard dumped 10-18" of snow in and around Chicago, Illinois. On February 26, 2013, the Carrier used a contractor, Joe Fisher, to plow and remove snow at road crossings, signal bungalows, and driveways between Niota, Illinois, and Galesburg, Illinois on the Chillicothe Subdivision of the Chicago Division. On April 10, 2013, the Organization filed a claim protesting the contracting out:

Joe Fisher employees used two pick-up trucks with snow plows attached. BNSF has equipment to perform this type of work, including truck #17019 in Galesburg, IL. Had the work been planned appropriately, it could have easily been accomplished by MOW employees per the contractual agreement. Snow is not an emergency in Illinois, as this storm and all others are forecast days in advance.

The Carrier denied the claim on the basis that the blizzard constituted an emergency and it was necessary to use contractors to remove snow in order to resume normal operations. In addition, the Carrier contended that there was a mixed practice with snow removal, in that it was routinely done not only by MoW forces, but forces from other departments as well as contractors.

Rule 55 requires that work that is customarily, historically and traditionally performed by BMWF-represented forces may only be performed by outside forces when certain criteria are met:

[S]uch work may only be contracted provided that special skills not possessed by the Company's employees, special equipment special skills 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 the Company's forces.

The Organization contends that snow in Illinois is not an emergency, due to the fact that storms are forecast "days in advance." While it is true that snow in the upper Midwest is to be expected in the wintertime, it is simultaneously unexpected: one knows that it *will* at some point snow, but not necessarily *when* or *how much*, despite advances in meteorology and forecasting. The record includes "Records of Climatological Observations" prepared by the National Oceanic and Atmospheric Administration documenting significant snowfall in the area up to and including February 26, 2013. From 10" to 18" of snow is a significant amount. The record establishes that operations were disrupted in some parts of the Carrier's property. Its own forces were already fully employed and working overtime (the Claimants worked 16 and 22 hours on the date at issue), and the Carrier decided it needed to supplement its own forces with outside contractors in order to resume normal operations as quickly as possible. The record persuades the Board that the snow removal at issue fell within the emergency exception to Rule 55. In cases of emergencies, advance notice of contracting out is not required. The Carrier did not violate Rule 55 when it contracted the snow removal that is the subject of this 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 13th day of April 2021.