

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44507
Docket No. 45905
21-3-NRAB-00003-200503**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Supervisor J. Hawkins to perform Maintenance of Way work removing snow from switches on the Michigan Line between Mile Posts 116 and 143 on January 21, 2019 instead of calling and assigning Mr. K. True thereto (Carrier’s File BMWE-154406-TC NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. True shall now “... be compensated for all straight and overtime hours worked by Track Supervisor Hawkins on January 21, 2019 at the Trackman straight and overtime rates of pay. However, no less than eight (8) hours.”**

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 Claimant maintains seniority as a trackman in the Carrier's Maintenance of Way Department. During the time period involved, the Claimant was in furlough status subject to recall. On January 21, 2019 the Carrier utilized Supervisor J. Hawkins to perform eight hours of work removing snow from switches between Mile Posts 116 and 143 on the Michigan Line. It did not attempt to recall the Claimant to perform the work.

The Organization argues that the Carrier violated the Agreement by not assigning the work to the Claimant, a qualified, available employee. This work was not of an incidental nature but is regular track maintenance work that is reserved per Agreement to the BMWE.

The Carrier argues that the Claimant was on furlough. Carrier cannot be expected to bring someone back from furlough for one day of work. According to the Carrier, it is well-established that it need not recall furloughed employees for short-term vacancies. In addition, the Carrier asserts that the work in question is not exclusively performed by employees of the Organization. Many crafts perform snow removal, which is emergency work. Finally Carrier contends that even if it is found to have violated the Agreement, the remedy should be to pay the Claimant the regular rate, not the overtime rate.

In response to the Carrier's arguments, the Organization asserts that BMWE employees traditionally perform this type of work. There is no requirement that it have been done exclusively by BMWE employees.

Upon a review of the record, the Board finds that in light of the emergency situation, the Carrier did not violate the Agreement when it assigned the work of snow removal to a supervisor. The Carrier did not know that there would be a need to make such an assignment until four BMWE employees did not report for work on the day in question. The need to remove the snow was immediate. Under those circumstances, it was neither feasible nor required to bring the Claimant back from furlough to do the work.

We find that the Organization has not met its burden of proving that the Carrier violated the Agreement.

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 29th day of July 2021.