

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44582  
Docket No. MW-44131  
22-3-NRAB-00003-200833**

**The Third Division consisted of the regular members and in addition Referee James M. Darby when award was rendered.**

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

**PARTIES TO DISPUTE: (  
(BNSF Railway 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 work (snow removal) from Mile Posts 342.0 to 368.5 on the Fort Worth Subdivision beginning on February 27 and 28, 2015 (System File 90-SFA8-1561/14-15-0290 ATS).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance notification in writing of its intent to contract out said work 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 Appendix 8 and the December 11, 1981 National Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants M. Walton, B. Contreras, R. Goodsite, B. Hensley, J. Green, B. Szikula and H. Davis shall now each be compensated for eight (8) hours of overtime and seven (7) hours of double time.”**

**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.

This dispute arose on the Fort Worth subdivision between MP 342.000 to MP 368.500 when BNSF contracted Gandy Dancer to assist with snow and ice removal between February 27 and 28, 2015. During the dates in question, heavy snow and freezing rain swept across northern Texas. In addition to heavy snow and freezing rain, north Texas was facing below normal temperatures—a high of 20 degrees F. BNSF is not equipped in north Texas to handle such weather conditions and must rely on outside sources to assist with the removal of snow and ice. Accordingly, due to the abnormal weather conditions, BNSF declared an emergency on the Fort Worth Subdivision and took the necessary steps to keep the railroad running, which included the use of Gandy Dancer—for two days—to assist with snow and ice removal.

The Carrier contends that the Organization herein has failed to establish that maintenance of way employees have performed the involved work on a system-wide basis to the exclusion of all others. It also contends that it was an emergency situation, and therefore Appendix 8 is clear that no notice is required in emergencies.

After careful consideration the Board concludes that the claim must be denied. The Organization has failed to rebut the Carrier's assertion that an emergency situation was present due to the extremely cold temperatures and the significant amount of ice and snow that accumulated during the time frame in question in the area of North Texas. Under these circumstances, Appendix 8 excuses the Carrier from having to provide the Organization with notification of any subsequent contracting out to address the emergency.

Specifically, Appendix 8 discusses emergencies in the Letter of Understanding dated September 28, 1956 and states that no notice is required in cases such as this:

**LETTER OF UNDERSTANDING DATED SEPTEMBER 28, 1956**

In connection with the application of the above, the Carrier may, without conference with the General Chairman, arrange for the use of equipment of contractors or others and use other than maintenance of Way employes of the Carrier in the performance of work in emergencies, such as wrecks, washouts, fires, earthquakes, landslides and, similar disasters.

Accordingly, for these reasons the claim is 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 29<sup>th</sup> day of October 2021.