PUBLIC LAW BOARD NO. 2960

AWARD NO. 55

CASE NO. 53

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned employes holding no seniority within the Track Subdepartment to perform trackman's work (clearing snow from switches) on January 5, 1982 at Kansas City, Missouri. (Organization's File 2T-2936; Carrier's File 81-24-127).

(2) Because of the loss of work opportunity, furloughed trackmen D.L. Lopez, J. E. Brown, M. L. Ruckman, and C. L. White shall be compensated for two (2) hours at the time and one-half rate and for eight (8) hours at the straight time rate."

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds that the Employe and the Carrier involved in this dispute are respectively Employe and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are not in dispute. On January 5, 1982, the Kansas City area received an extremely heavy snowfall. As a result,

the Carrier's traffic through the Kansas City Yard was totally stopped. In order to commence train movement, it was necessary to use all available maintenance of way personnel to clean snow from switches. In order to effectuate the cleanup, the Carrier sent the B & B crew consisting of four employees from Sheridan, Missouri, to assist. Sheridan, Missouri is 127 rail miles away from Kansas City. Evidently, the Claimants were transported by highway in their heavy-duty truck. The Claimants are trackmen in the track sub-department in Kansas City and were in a furloughed status at the time of the incident. The Claim basically contends that the work in question belongs to employees in the track sub-department and that the Carrier was obligated to recall the Claimants.

There is no real dispute that the work in question principally belongs to the track sub-department pursuant to Rule 2, nor is there any dispute that the Agreement in Rule 14 makes provisions for the recall of furloughed employees for extra or relief work. Moreover, the record establishes that the Claimants had properly registered their desire to be recalled for extra work per Rule 14.

The crux of the issue is the Carrier's contention that the circumstances present at the time justified using the B & B crew. These circumstances included the extremely heavy snowfall, the resultant fact that the Yard was at a standstill, and the fact that in order for Claimants to return to service, they would first have to be contacted by the Carrier and would have to undergo medical examinations. Thus, they contend, in order to meet this emergency

meeting, a delay of this nature would be impossible.

Seniority rights, especially when so clearly defined as they are in the context of these facts, should not be taken lightly. On the other hand, those seniority rights have to be balanced against the practical considerations that arise in emergency situations. With these two thoughts in mind, the Board reviewed the evidence and the arguments and concluded that the Carrier failed to put forth enough evidence to justify the lack of deference shown to the seniority rights of the Claimants.

The genesis of the Carrier's defense is found in response to the claim by the AVP-Division Manager. The response cited two justifications:

> "The time element in an emergency situation such as this does not permit the recalling of furloughed employees who may or may not be prepared to go to work on short notice and in all cases after being furloughed for 30 days or more would require physicals by a Company Doctor prior to reporting for work."

With respect to the first justification, it is difficult to believe employees, called over the phone in the same city, couldn't respond faster than employees traveling over the highway after a major snowstorm at a distance of 127 miles. With respect to the second reason the Carrier gives for utilizing the B & B crew, the Board finds this defense inadequately developed in this record. Thus, we cannot affirmatively rule on it. It is also noted that the Organization claims that such a requirement doesn't exist. Beyond this, it is noted there is no evidence put forth by the Carrier that such a formal policy exists beyond mere assertion. Next, it is

observed, even assuming there was in fact such a policy, that there is no evidence, or even an assertion, that the Claimants had been furloughed for more than 30 days. In view of the fact that the Carrier failed to justify the non-use of the Claimants for work they are entitled to under the Agreement, the Claim will be sustained.

AWARD: The Claim is sustained.

Gil Vernon, Chairman

H. G. Harper, Employe Member

J. D. Crawford, Carrier Member

Dated: 5-8-84