

PUBLIC LAW BOARD NO. 6218

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**
TO)
DISPUTE) **UNION PACIFIC RAILROAD COMPANY (FORMER MISSOURI**
 PACIFIC 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 (Ronnie Wall, Inc.) to perform Maintenance of Way work (repair a culvert) at Mile Post 37.75 in the vicinity of Kildare, Texas on the Dallas Subdivision beginning April 13 through May 7, 1993 (Carrier's File 930600 MPR).
2. The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. C. C. Mudford, D. L. Thomas, M. L. Glasscock, J. D. Daniel, K. A. Meriwether and M. L. Hayhurst shall each be allowed pay at their respective rates for an equal proportion-

ate share of the one thousand on hundred eleven and one-half (1111.5) hours expended by the outside forces in the performance of the work in question.

OPINION OF BOARD

Without prior notice to the Organization, the Carrier utilized a contractor for culvert repair work. This claim followed.

For reasons discussed in *Awards 1 and 2* of this Board, the Carrier's exclusivity arguments are rejected.

The Carrier defends, in part, on the ground that the contracting out was necessitated by emergency conditions. According to the Carrier's October 26, 1993 letter:

... [T]his work was done in an emergency situation as a head wall had slipped off which damaged two culverts. Not only was the Railroad running on a 10 m.p.h. slow order, but most importantly, a highway was blocked off due to being underwater. In addition, water was backed up in a farmer's pasture which caused him to have to evacuate his cows.

Emergency conditions allow the Carrier to exercise substantial latitude with respect to deviation from its contractual obligations.¹ Here, the damage to the head wall and two culverts which caused flooding and blockage to a highway is, in our opinion, an emergency. As such, the Carrier did not have to follow the notice provisions of Article IV.²

The Organization's argument that a slow order does not constitute an emergency is not persuasive. The conditions constituting the emergency existed beyond train op-

erations — here, the flooding and blockage of a highway caused by the damage.³

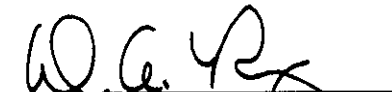
The claim shall be denied.

WAWARD

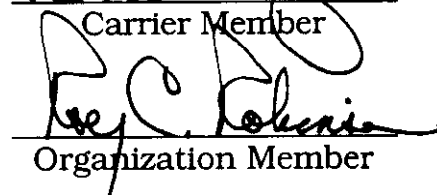
Claim denied.



Edwin H. Benn
Neutral Member



Carrier Member



Organization Member

¹ See e.g., *Third Division Award 26677* ("This Board has held that in an emergency Carrier may take whatever action it deems appropriate to cope with its problems; see *Third Division Awards 13316, 12777, 15597* and many similar holdings."). See also, *Third Division Award 35529* where it was stated:

Sixth, with respect to emergencies, "... in emergency situations the Carrier has latitude to use its discretion in the assignment of forces." *Third Division Award 32420* and *Awards cited therein*. However, when the Carrier claims the existence of an emergency, it "... bears the burden to demonstrate the existence of an emergency so as to allow it to avoid the requirements of the Agreement concerning the use of employees." *Third Division Award 32419*. That burden is for the Carrier to demonstrate the existence of "... an unforeseen combination of circumstances that calls for immediate action." ...

² See *Third Division Award 30868* ("... where immediacy of action is required ... advance notice is not practicable.").

Chicago, Illinois

Dated: 7/31/02

³ See *Third Division Award 32273* which rejected the argument that there can be no emergency as long as trains are running:

... At the time, the trains were all subject to slow orders in the affected area. The Carrier has shown that an emergency did exist. We find that it is not necessary that the line be completely shut down in order for an emergency situation to exist. We also find that the fact that there was no notice served does not require a sustaining award because in this situation the emergency conditions required immediate action.

Third Division Award 32862 does not require a different result. There, "[t]his record only shows that track stabilization work was necessary due to water seepage." Here, there was flooding blocking a highway.