

Award No. 36
Case No. 64

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
The Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

Carrier violated the Schedule Agreement when it called Track Inspector J. V. Gianangeli to clean switches and crossings at Benwood, West Virginia on January 9, 19, 20, 24, 26, 27 and 29, 1978, instead of furloughed Trackman J. J. Ronevich. The work performed on those seven days, a total of 46 1/2 hours, should have been assigned to J. J. Ronevich and he should be compensated for those 46 1/2 hours at the appropriate rate of pay.

FINDINGS:

On each of the claim dates except January 19 and 24, Track Inspector Gianangeli assisted in cleaning ice and snow from switches. The ice and snow was caused by a winter storm that, according to Carrier, created an "emergency" condition.

We have had frequent occasion to point out that the mere existence of a snowstorm does not necessarily constitute a true

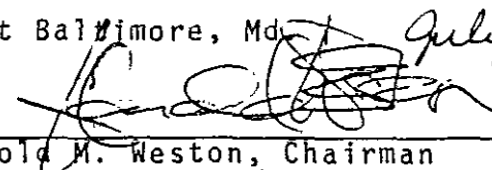
emergency situation. In order to show that an emergency existed, it is incumbent upon Carrier to present detailed evidence as to the extent, intensity and nature of the storm. Merely to allege that it is "severe" is not sufficient.


Since in the present case Petitioner did not raise any issue as to the emergency nature of the storm, we will deny the claim with respect to January 9 and 20. We will also deny the claim as to January 19 and 24 since on those dates, Mr. Gianangeli's work was confined to track inspection.


The claim will be sustained as to January 26, 27 and 29. By that time, Carrier had ample notice of conditions and opportunity to bring in a furloughed trackman to help clean ice and snow from switches. We agree with Petitioner that a furloughed employee should have been used, in the absence of an emergency, in preference to a track inspector to perform the work in question. Carrier has presented inadequate evidence that the inspector was entitled to the work. In the absence of further details, the emergency could not be held to continue from January 9 to January 26, 27 and 29.

AWARD: Claim sustained as to January 26, 27 and 29, 1978; denied as to January 9, 19, 20 and 24, 1978. To be effective within 30 days.

Adopted at Baltimore, Md. *July 13,* 1984.


Harold M. Weston, Chairman


Carrier Member


Employee Member