

PUBLIC LAW BOARD NO. 3460

Award No. 67

Case No. 67

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Burlington Northern Railroad Co.

STATEMENT
OF CLAIM:

- "1. The Agreement was violated when the Carrier assigned outside forces to perform snow removal work at the Duluth-Superior Terminal on January 24, 25, 26, 27 and 28, 1982.
2. As a consequence of the aforesaid violation Claimants T. Williams, D. W. Kolodzeske, J. O. Parker, R. Porter, W. Mercier, D. Koecher, J. Peterson, G. Bertran and G. Eklund shall each be allowed compensation at their respective straight time and time and one-half rates, from equal share of three hundred and thirty six (336) total hours (one hundred seventy-six (176) straight time hours and one hundred sixty (160) overtime hours) of work performed by the Contractor forces on the dates referred to in part (1) hereof."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The dispute herein deals with the period of time already referred to in Award No. 56 of this Board. During the week of January 24, 1982, a severe winter storm hit the entire area including the Duluth-Superior-Allouez Terminal resulting in the entire area being buried under tons of snow. The result of this blizzard was

effectively the halting of all train operations in the Terminal. Carrier herein, together with most other enterprises and government units in the area, declared a snow emergency and attempted to marshall all available forces and equipment to clear the snow and restore normal operations. The efforts to clear the snow continued throughout the entire period of this claim, starting January 24 and continuing through January 29. The evidence in the record indicates that, with all forces marshalled and all equipment being used, Carrier was unable to clear the snow away and haul it from the Terminal without outside assistance. Carrier forces and equipment were being worked as nearly as possible around the clock in order to achieve the desired result. In addition, Carrier contracted four front end loaders and two motor graders from outside contractors, together with their drivers, to assist in the operation. This selection was made after Carrier attempted to call three other firms and enquired whether or not equipment was available without operators so that Carrier's employees, if available, could be utilized. None of the contractors were willing to furnish machines without operators during the snow emergency. It must be noted that Claimants herein, together with other Carrier machine operators, were fully employed at the time, attempting to clear the snow from the Terminal.

Petitioner insists that the work of the character involved has customarily and historically been performed by Carrier's Roadway

Equipment Sub-Department Employees as reserved to those employees under many rules of the Agreement including Rules 1, 2 and 55. Petitioner maintains further that the purpose of the Agreement and the scope rule was violated and defeated by the action of Carrier in this instance. It is urged that work of a class belonged to those for whose benefit the contract was made and that the assignment of such work to others, not covered by the Agreement, is a violation. Additionally, Petitioner notes that in a letter dated October 11, 1971, the Carrier's Vice President of Labor Relations specified that Rule 55 classifies work that comes under the scope of the Agreement. Thus, Rule 55 and the work therein is an integral component of the scope rule. Petitioner argues further that there were indeed contractors who would have leased equipment without drivers or operators on the dates in question and, furthermore, that Claimants, though employed, did suffer a loss of work opportunity as a result of Carrier's actions.

Carrier's principal argument is that it properly contracted the snow removal work during the emergency. In addition, Carrier argues that there is no evidence whatever establishing that snow removal work is work customarily performed by employees in the Maintenance of Way Department. In this instance, many crafts were used to accomplish the desired snow removal work, in addition to the outside forces, and in addition to employees represented by this Organization. Carrier did not have additional equipment they could use and, therefore, was unable to handle the work without

using outside contractors, with their equipment, to relieve the emergency situation. In addition, Carrier notes that the Organization has not proved that there were indeed contractors who would have had equipment available without operators during that particular snow emergency period.

This dispute turns on two principles. The first one was addressed by this Board in Award No. 56, as well as in Award No. 65 of this Board. In those awards, the Board indicated that there was no evidence that the removal of snow was exclusively reserved to Maintenance of Way Employees. Perhaps, the most important element, however, with respect to this dispute, is the last paragraph of the note to Rule 55 which reads as follows:

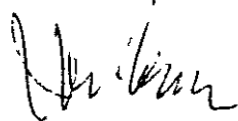
"Nothing herein contained shall be construed as restricting the right of the Company to have work customarily performed by employees included in the scope of this Agreement performed by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible."

The Board must emphasize the fact that the particular circumstances involved herein, a blizzard and a total halt to all operations in the Terminal, clearly constituted an emergency. As such, therefore, the note to Rule 55 absolves Carrier from all restrictions in dealing with that emergency situation. Even if Petitioner were correct in its other assertions and contentions, it is apparent that, during the emergency, Carrier was permitted

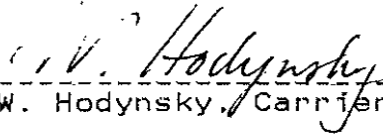
to use outside contracted forces and/or equipment in an effort to reduce the emergency and clear it up in the shortest possible time. For these reasons, therefore, the claims must be denied.

AWARD

Claims denied.



I. M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F. H. Funk, Employee Member

9/20/88

St. Paul, Minnesota
August , 1988