

PUBLIC LAW BOARD NO. 4104

Case No. 16/Award No. 16

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when it called and used furloughed Sectionmen E.L. Mangrum to perform snow removal work on December 27, 28, 29, 30 and 31, 1982, instead of calling and using furloughed Sectionmen A. Maes who was senior, available and willing to perform that service.

2. As a consequence of the afore-mentioned violation, Claimant A. Maes shall be allowed thirty-five and one-half (35½) hours of pay at the sectionman's straight time rate and eight and one-half (8½) hours of pay at the sectionman's time and one-half rate in effect on the claim dates.

OPINION OF BOARD: The relevant facts of this claim are not in dispute. Claimant A.A. Maes was a Section Laborer in the Track Sub-department of Carrier's Denver, Colorado facility. Claimant held seniority as of September 19, 1978. Claimant resides in Loveland, Colorado; some 51 miles outside Denver. Claimant was on furlough during the dates in question.

On December 23 and 24, 1982, a blizzard blanketed the Denver area with over 23 inches of snow. During the period December 27 to 31, 1982, 44 hours of snow removal work was performed by Section Laborer E.L. Magrum, seniority as of May 30, 1979.

The Organization filed the instant claim on January 21, 1983, alleging that 35½ hours of straight time work and 8½ hours of overtime work were erroneously given to a junior employee, rather than to Claimant, in violation of Rules 2 and 29. Carrier timely denied this claim. Thereafter, the claim was

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handled in the usual manner, on the property. It is now before this Board for adjudication.

The Organization submits that it is undisputed that Claimant held greater seniority than E.L. Magrum, the individual who performed the work. Further, it urges that Claimant was ready, willing, and able to perform the snow removal work at Carrier's Denver facility, but that Carrier did not call Claimant to do this work. Accordingly, the Organization asks that the claim be sustained.

Carrier, on the contrary, asserts that due to the blizzard and resultant emergency conditions, it could call only those employees residing within the immediate area of Denver, Colorado. Accordingly, Carrier asks that the claim be denied.

After carefully considering the record evidence, this Board concludes that Claimant is entitled to compensation in the amount of \$75.00. This sum is reasonable and warranted under the facts of this case. It is so awarded. Thus, the claim is sustained to this extent.

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FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor act as approved June 21, 1934;

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated in part.

AWARD:

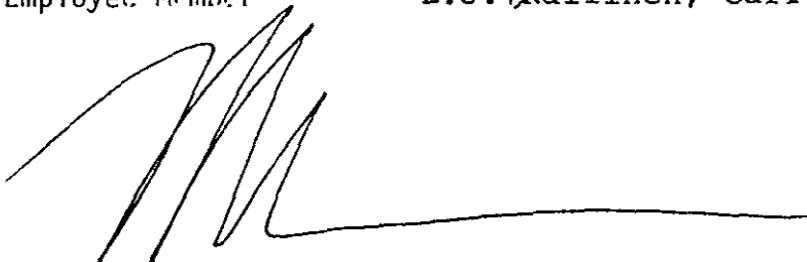
Claim sustained to the extent indicated in the Opinion



P. S. Swanson, Employee Member



E.J. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member