

PUBLIC LAW BOARD NO. 4104

Case No. 18/Award No. 18

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 Sectionman M. Johnson to perform snow removal work on December 27, 28, 29, 30 and 31, 1982, instead of calling and using furloughed Sectionman J. Carey, who was senior, available and willing to perform that service.

2. As a consequence of the afore-mentioned violation, Claimant J. Carey shall be allowed thirty-eight (38) hours of pay at the sectionman's straight time rate, twenty (20) hours of pay at the sectionman's time and one-half rate and four (4) hours of pay at the sectionman's double time rate in effect on the claim dates.

OPINION OF BOARD: Claimant J.K. Carey was a Section Laborer in the Track Sub-department of Carrier's Denver, Colorado facility. Claimant held seniority as of May 15, 1978. Claimant was on furlough during the dates in question.

The facts of this claim are essentially the same as those set forth in PLB No. 4104, cases 16 and 17, with minor exception, and we will not repeat them here. Suffice it to say, that on December 23 and 24, 1982, the Denver, Colorado area was hit with a blizzard. During the period extending from December 27 to the 31, 1982, 38 hours of snow removal work was performed by Section Laborer M. Johnson; seniority as of September 18, 1978.

The Organization filed the instant claim on February 7, 1983, alleging that Carrier improperly assigned the snow removal work to M. Johnson, rather than to Claimant, the senior employee,

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in violation of Rules 2 and 29. The Carrier timely denied this claim. Thereafter, it was handled in the usual manner, on the property. It is now before this Board for adjudication.

The arguments of the parties echo those set forth in the aforementioned cases (PLB No. 4104, Case Nos. 16 and 17). In this claim, however, Carrier asserted that Claimant had been called to perform the work at 10:58 a.m. on December 27. The Organization disputed this contention. It provided affidavits of Claimant and his wife to the effect that their phone was in working order, but that they had received no calls from Carrier.

After carefully considering the record evidence, this Board concludes that Claimant is entitled to compensation in the amount of \$75. 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.

AWARD:

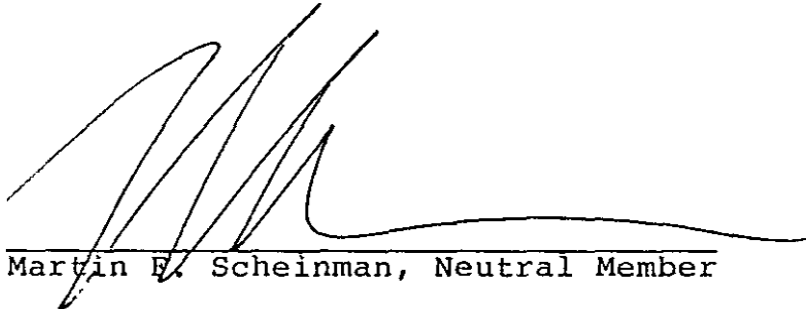
Claim sustained to the extent indicated in the Opinion.



P. S. Swanson, Employee Member



E. J. Kallinen, Carrier Member



Martin E. Scheinman, Neutral Member