

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45333
Docket No. MW-48005
25-3-NRAB-00003-220520**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

**PARTIES TO DISPUTE: (
(Wisconsin Central Ltd.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Machine Operator A. Mr. G. Synder, to operate the Geismar and perform snow removal in and around the Fond du Lac Yard on the Waukesha Subdivision, and instead assigned Foreman B. Hansen thereto on February 4 and 5, 2021 (Carrier’s File WC-BMWED - 2021-00002 WCR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Synder shall be compensated for twelve (12) hours at the applicable time and one-half rate of pay, at the applicable respective rates of pay for the lost work opportunity.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant G. Synder has established and holds seniority within Carrier's Maintenance of Way and Structures Subdepartment. At the time of this dispute, he was regularly assigned and working as a headquartered Machine Operator A-Geismar working on the Fond du Lac section gang headquartered in Fond du Lac, Wisconsin.

Employee B. Hansen has established and holds seniority within the Carrier's Maintenance of Way and structures Subdepartment. On the dates giving rise to this dispute, employee B. Hansen was assigned and working as a headquartered foreman.

The record evidence reflects that on the two (2) claim dates cited by the Organization, specifically February 4 and 5, 2021, the Carrier required the services of an employee to perform the duties of operating the Geismar for the purpose of general snow removal in and around the Fond du Lac Yard on the Waukesha Subdivision. The Organization asserts that instead of assigning the Claimant who was the senior, available employee with the proper job classification of Machine Operator A and who ordinarily and customarily performs the work of operating the Geismar as part of his regular assigned duties, Carrier instead called and assigned Mr. B. Hansen to perform the disputed work herein.

In so assigning the disputed work assignment to B. Hansen rather than the Claimant, the Organization alleges Carrier violated Rule 22 – the Overtime provision of the March 3, 2014 Collective Bargaining Agreement, specifically Sections 1D and 3A, respectively pertaining to Compensation and Preference for overtime work. The two (two) cited sections of Rule 22, and their subsections, paragraph D and A, read in their entirety as follows:

Section 1D: Work in excess of forty (40) straight time hours in any workweek shall be paid at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another.

Section 3A: When work is to be performed outside the normal tour of duty and not in continuance of the day's work, the senior active employee

in the required job class in the assigned gang will be given preference for overtime work ordinarily and customarily performed by them (emphasis Organization)

From a review of the Organization's argument before us, the Board notes a contradiction in its written submission identifying the junior employee to the Claimant as J. Brenna, who was assigned to operate the Geismar and perform the subject snow removal work rather than B. Hansen, the junior employee to the Claimant named in the claim as having been the employee assigned to operate the Geismar and perform the subject snow removal work. As stated in its written submission, the Organization asserted the following:

"In contrast, employee J. Brenna is junior to the Claimant and is employed in the foreman job classification and was, therefore, not entitled to operate the Geismar and perform general snow removal work and deprive the Claimant of an overtime opportunity" (p.5).

To further add to the mystery as to who actually operated the Geismar on the two claim dates in question, a review of the Carrier's argument as reflected in its written submission reveals yet the name of another employee Carrier asserts was the person that was assigned to operate the Geismar and performed the subject snow removal work and that employee was identified as Ben Eichhorst. Carrier asserts that Eichhorst holds/owns the Geismar position for Fond du Lac on nights and that Foreman Brian Hansen was brought in to work a Foreman specific job by helping the night crew clear snow on the two (2) claim dates cited. Carrier further submits that the Claimant reported to work the next day to operate the Geismar thereby relieving the night operator from duty to continue the snow removal work. As a result, Carrier argues that since it properly called in the incumbent Geismar operator to work at night to perform the snow removal work in question and too, that Hansen was there in the capacity of a foreman to aid the night crew, there was no monetary harm suffered by the Claimant as he operated the Geismar equipment during the following day shift.

Based on the respective positions advanced by the Parties hereinabove, the Board, upon our review, deem the "facts" as presented before us to be so totally unclear as to be irreconcilable. Accordingly, we find the fairest resolution of the instant claim is to award half the number of hours the Organization seeks to remedy the Claimant's loss of overtime work opportunity predicated on his senior status. To be precise, the Claimant is hereby awarded six (6) hours of overtime pay at the applicable rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of October 2024.