

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45334  
Docket No. MW-48006  
25-3-NRAB-00003-220521**

**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 on February 12, 2021, when the Carrier assigned Mr. M Woodworth to perform the duties of cold weather coverage, while relieving a vacant night foreman position, in Neenah, Wisconsin on overtime instead of assigning Mr. T. Buchenauer thereto (Carrier’s File WC-BMWED-2021-00008 WCR).**
- (2) The Agreement was violated on February 8 and 11, 2021, when the Carrier assigned Mr. J. Niles to perform the duties of snow removal and cold weather coverage, while relieving a vacant night foreman position in Neenah, Wisconsin on overtime instead of assigning Mr. T. Buchenauer thereto (Carrier’s File WC-BMWED-2021-00007)**
- (3) The Agreement was violated on December 29, 2020, January 15, 2021, February 4 and 5, 2021, when the Carrier assigned Mr. N. Ejnik to perform the duties of snow removal and piloting the AF1 truck, while relieving a vacant night foreman position, in Green Bay, Wisconsin on overtime instead of assigning Mr. T. Buchenauer thereto (Carrier’s File WC-BMWED-2021-00006).**
- (4) The Agreement was violated on February 9 and 10, 2021, when the Carrier assigned Mr. J. Niles to perform the duties of removal and cold weather coverage, while relieving a vacant night foreman**

position, in Neenah, Wisconsin on overtime instead of assigning Mr. T. Buchenauer thereto (Carrier's File WC-BMWED-2021-00009).

- (5) As a consequence of the violation referred to in Part (1) above, Claimant T. Buchenauer shall be compensated for a total of eight (8) hours at the applicable time and one-half rate of pay, at the applicable respective rate of pay for the lost work opportunity on February 12, 2021.
- (6) As a consequence of the violation referred to in Part (2) above, Claimant T. Buchenauer shall be compensated for a total of sixteen (16) hours at the applicable time and one-half rate of pay, at the applicable respective rates of pay for the lost work opportunities on February 8 and 11, 2021.
- (7) As a consequence of the violation referred to in Part (3) above, Claimant T. Buchenauer shall be compensated a total of forty (40) hours at the applicable time and one-half rate of pay, at the applicable respective rates of pay for the lost work opportunities on December 29, 2020, January 15, 2021, February 4 and 5, 2021.
- (8) As a consequence of the violation referred to in Part (4) above, Claimant T. Buchenauer shall be compensated for a total of sixteen (176) hours at the applicable time and one-half rate of pay, at the applicable respective rates of pay for the lost work opportunities on February 9 and 10, 2021."

**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 Todd Buchenauer has established and holds seniority within the Carrier's Maintenance of Way and Structures Subdepartment. At the time of this dispute, he was regularly assigned and working as a mobile relief foreman.

The named employees in Parts (1, 2, 3, and 4), M. Woodworth, J. Niles and N. Ejnik have also established and hold seniority within the Carrier's Maintenance of Way and Structures Subdepartment. On the dates giving rise to this dispute, said named employees were assigned and working as a headquartered foreman at their respective headquartered locations.

At the outset of the Board's consideration of the respective positions advanced by the Parties on the merits of the claims presented, Carrier argues the instant case is procedurally defective in that the four (4) claims that comprise the case before us should have been filed and docketed as individual cases. As a result, Carrier submits that on this basis, the Board should find to dismiss the case. However, notwithstanding its plea to dismiss the case in its entirety Carrier, nevertheless addresses the merits of each of the claims listed above in Parts (1, 2, 3, and 4). In response to Carrier's argument the case should be dismissed on technical grounds, the Organization notes that the instant dispute involving the subject four (4) claims was initiated separately on the property but was combined by the Carrier inasmuch as all four (4) claims involved the same rules and virtually identical fact patterns. The Organization submits that combining the claims was done in order to avoid unnecessary and burdensome repetition specifically for presentation before the Board.

Upon consideration of Carrier's argument the case in its entirety should be dismissed on technical grounds, the Board finds that while deciding multiple claims in one case is unusual and could very well be dismissed for that reason, in the subject case before us we are persuaded that the combining of the four (4) claims by the Parties on the property based on the commonality of the facts surrounding each claim, that is, involving the same Claimant, T. Buchenauer and almost identical circumstances, was a practical approach in their attempt to resolve the claims and therefore, we concur that same approach should be pursued by us in moving to a resolution of this dispute. Accordingly, we undertake a review of the claims as one case based on the merits.

The Organization cites as controlling the following two (2) rules of the Agreement as having been violated by the Carrier, Rule 03 – Classification of Positions and Rule 22

– Overtime, Section 1. Compensation, Subsection D, and Section 3. Preference for overtime work. Subsection A. These cited Rules read in pertinent part as follows:

**Rule 3A.** All positions subject to this agreement will be placed in one of the general classifications as follows:

**Foreman Lead Mechanics, Mobile Foreman Track, Mobile Foreman Structures, Headquartered Foreman Track, Headquartered Foreman Structures, Track Inspector.**

**Rule 22, Section 1D.**

**Work in excess of forty (40) straight time hours in any workweek shall be paid for 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.**

**Rule 22, Section 3A.**

**When work is to be performed outside the normal tour of duty and not in continuation of the day's work, the senior active employee in required job class in the assigned gang will be given preference for overtime work ordinarily and customarily performed by them.**

**The Organization asserts the dispute centers around the Carrier's violation of the above two (2) rules when, on the cited dates, in each respective claim, the Carrier failed to assign the Claimant, who was assigned and working as a mobile relief foreman who ordinarily and customarily relieves foreman positions that are vacant and instead chose to call and assign foreman junior in seniority to Claimant to perform the subject work.**

**The Carrier's counter position in each of the four (4) claims is that there is a distinction between Mobile Foreman and Headquartered Foreman when making assignments of overtime work even though both foreman positions fall within the same General Classification of Foreman as provided for in Rule 3A of the Agreement. In each claim, Carrier argues it assigned the subject overtime work to the senior employee in the classified position of Headquartered Foreman who customarily and ordinarily performs said work on the headquarters territory as opposed to assigning the Claimant who is classified as a Mobile Foreman. In each case, the work performed on all of the claim dates cited was to relieve the vacant night foreman position on the Headquarters'**

territory. Carrier asserts it is not required by the cited two (2) Agreement rules to call Claimant, a Mobile Foreman to work the overtime assignment when the qualified employee who works the overtime on their bulletined job and available and ready to perform the duties required as were the circumstances that prevailed on all the cited claim dates. Therefore, according to the Carrier, with Headquartered Foreman having priority over Mobile Foreman to fill the vacant foreman position on each of the claim dates cited in each of the four (4) claims that comprise this case, seniority of the Claimant was not relevant in making the overtime assignments at issue. As a result, Carrier asserts it has not committed any violation of the Agreement as alleged herein by the Organization.

Upon a comprehensive review of all the facts and circumstances advanced by the Parties in support of their respective positions, the Board finds Carrier did not violate Rules 3A, 22(1D) (3A) of the Agreement by assigning the overtime work at issue to the three named Headquarter Foreman instead of assigning said work to Claimant, a Mobile Foreman notwithstanding Claimant's status as being more senior in seniority than anyone of the three (3) Headquarter Foreman.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 31<sup>st</sup> day of October 2024.