

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45335
Docket No. MW-48007
25-3-NRAB-00003-220522**

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. (WC)

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 B, Mr. J. Prochaska, to perform the duties of working with the AF1 blower truck while removing snow and ice on overtime in Green Bay, Wisconsin and instead assigned Machine Operator A, Mr. K. Vanderwegan, thereto on February 13, 2021 (Carrier’s File WC-BMWED-2021-00013 WCR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Prochaska shall now be compensated for a total of five (5) 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 13, 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 Prochaska 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 Machine Operator B-Speedswing on the Green Bay section crew, headquartered in Green Bay, Wisconsin.

Employee K. Vanderwegen has established and holds seniority within the Carrier's Maintenance of Way and Structures Subdepartment. On the date giving rise to this dispute, employee K. Vanderwegen was assigned and working as a Machine Operator A-Boom Truck operator from Stephenson, Michigan to Oshkosh, Wisconsin.

The Organization alleges that on the claim date in question, February 13, 2021, Carrier required the services of an employee to perform the duties of working with the AF1 blower truck while removing snow and ice on overtime in Green Bay, Wisconsin. Instead of assigning the Claimant, who was the senior, available employee who ordinarily and customarily performs the subject work in Green Bay, Wisconsin, the Carrier called and assigned Mr. K. Vanderwegen to the work involved herein.

The Organization cites the following two (2) sections of Rule 22 as having been violated by the Carrier as a result of its having assigned the work in question to be performed by employee Vanderwegen, junior in seniority to the Claimant Prochaska.

RULE 22 - OVERTIME

Section 1. Compensation

- D. 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.**

Section 3. Preference for overtime work

- A. 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 the required job class in the assigned gang will be given preference for overtime work ordinarily and customarily performed by them.

Carrier's counter argument presented in addition to its position the Organization failed to meet its burden to prove it violated the above two (2) cited sections of Rule 22, is that overtime work is ordinarily and customarily assigned to the senior employee who works the position on the headquarters territory and, in this instant case, that senior employee was Kevin Van Der Wegen (The Board notes this version of referencing Kevin's last name differs from the Organization's version). Given that Van Der Wegen was the senior headquartered operator in Green Bay, Carrier states he was therefore given preference for the overtime work. In addition, Carrier posits it was not required for it under the subject prevailing circumstances to call the Claimant Prochaska to perform the overtime work at issue here when the qualified employee works the overtime on his/her bulletined job, here Kevin Van Der Wegen, who was available and ready to perform the duties required.

As this Board has ruled in other almost identical cases where the Organization's position has relied solely on the basis of one employee's seniority being superior to the employee assigned by Carrier to perform disputed overtime work, said position precludes other factors Carrier deems consistent, appropriate, and not in violation of the Agreement in making an overtime work assignment, here specifically the geographic location of the work, Green Bay and the undisputed fact the work at issue fell within the jurisdiction of Van Der Wegen's bulletined position. Ordinarily, the Board would find these cited factors to overrule the sole factor of the Claimant's superior seniority status as having been entitled to perform the disputed overtime work opportunity at issue. However, in this instant case, we find Carrier, overlooked one additional factor in assigning the disputed overtime work at issue and that is, the Claimant's and Van Der Wegen's differing job classifications. The Claimant's job classification as a Machine Operator B - Speedswing entails operating the Speedswing on a very limited basis as needed and when not needed, otherwise performing laborer work that includes operating the AF1 Blower to perform the work of snow and ice removal at Green Bay whereas, Van Der Wegen as a Machine Operator A – Boom Truck Operator entails operating the Boom Truck on a daily basis all day moving from one (1) location to another typically between Stephenson, Michigan and Oshkosh, Wisconsin and not at

Green Bay and which does not involve ordinarily and customarily performing laborer work.

Given their differing job classifications and the work ordinarily and customarily performed by the Claimant and Van Der Wegen within their respective job classification, we concur with the Organization's position that under all the prevailing circumstances of this case, the Claimant was entitled to be assigned the subject overtime work of removing the snow and ice at Green Bay on February 13, 2021. Accordingly, we rule to sustain the Claim before us.

AWARD

Claim sustained.

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.