

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN – WISCONSIN CENTRAL RAILROAD**

Case No. 37

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rule 22 Section 3(A) of the Agreement when it failed to call and assign Claimants C. Peters and E. Kollmansberger, who were regularly assigned to the Marshfield Section Gang and instead assigned two (2) employees from the Owen Section Gang to perform work with the surfacing gang on the Marshfield Section Gang’s assigned territory, located at Mile Post 281.2 (System File C-220-14/WC-BMWED-2008-00015).
2. As a consequence of the violation outlined in Part 1 above, Claimants C. Peters and E. Kollmansberger shall each be allowed eight (8) hours’ pay at their respective time and one-half rates of pay.”

FINDINGS:

The Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the controlling Agreement when it failed to call the Claimants to perform work on their assigned territory, and instead assigned the work to employees from a different section gang. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Claimants were the regular employees ordinarily and customarily assigned to perform work at the location involved here, because there is no merit to the Carrier’s defenses, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because the Organization has not met its burden of proof, and because there was no violation of the cited rule.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated Rule 22 when it failed to call and assign the Claimants work that was performed on Saturday, May 17, 2008. Therefore, the claim must be denied.

The record reveals that the Claimants were Monday through Friday employees who worked that whole week, May 12 through May 16, 2008. On May 17, 2008, the Carrier assigned the Owen Weekend Section Gang to perform their regular work, which included the work at issue. The Organization states that Rule 22 required that the Claimants perform the work on overtime. This Board disagrees.

Rule 22, Section 3A, states, in part:

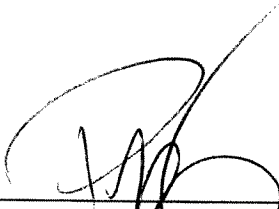
When work is to be performed outside the normal tour of duty and not in continuation of the days' work, the senior active employee in the required job class in the assigned gang will be given preference for overtime work normally and customarily performed by them.

This was not overtime work. This is regular work that was performed by the weekend assigned crew. It was the weekend crew's normal and customary work duties. It was not overtime work.

The Organization bears the burden of proof in cases of this kind. In this case, it has failed to meet that burden. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: Sept 12, 2011



ORGANIZATION MEMBER

DATED: September 12, 2011