

BEFORE PUBLIC LAW BOARD NO. 6915

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

Case No. 38

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, G. Kohl and E. Kollmansberger, who were regularly assigned to the Marshfield Section Gang and instead assigned employees from the Owen Section Gang and the Chippewa Falls West Section Gang to perform work of replacing cross ties on the Marshfield Section Gang’s assigned territory at Mile Posts 282 and 283.9 of the Superior Subdivision (System File C-220-12/WC-BMWED-2008-00013).
2. As a consequence of the violation outlined in Part 1 above, Claimants C. Peters, G. Kohl 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 different section gangs. 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 assign the three Claimants to perform the work at issue on Saturday, March 29, 2008. Therefore, the claim must be denied.

The record reveals that the Claimants did work replacing cross ties on a work schedule from Monday through Friday and did work a full week from Monday, March 24 through Friday, March 28, 2008. On Saturday, March 29, 2008, the Carrier had the Owen Weekend Section and the Chippewa Falls Weekend Section gangs perform their regular assignments, including replacing cross ties. The Organization relies on Rule 22 for this case in that the Claimants should have been called in to perform the work.

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.

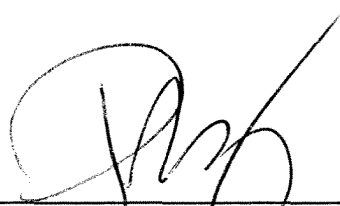
Although the Claimants do ordinarily and customarily perform the work that was performed on the day at issue by the other gangs, the record reveals that the Carrier has a weekend gang to perform that work and they were appropriately assigned the work at issue. The Carrier has demonstrated that the Claimants and the weekend crews are system seniority employees whose work can be performed by any section gang. There was no need for the Carrier to call in the Claimants on overtime when they had a

weekend section gang already regularly assigned to perform that work.

It is fundamental that the Organization bears the burden of proof in cases of this kind. The Organization has failed to meet that burden and, therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: Sept. 13 2011



ORGANIZATION MEMBER

DATED: September 13 2011