

BEFORE PUBLIC LAW BOARD NO. 6915

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

Case No. 43

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

1. The Agreement was violated when the Carrier assigned Track Inspector N. Ohlfs instead of Mr. S. Lewandowski to fill a ballast regulator operator temporary vacancy and operate the ballast regulator and clear snow from the Hill Track around Mile Post 38.6 on the Waukesha Subdivision during overtime hours on January 31, 2009 (Carrier’s File WC-BMWE-2009-00011).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Lewandowski shall be compensated for five and one-half (5 ½) hours’ pay at the Machine Operator B time and one-half rate of pay.”

FINDINGS:

The Organization filed the instant claim on the Claimant’s behalf, alleging that the Carrier violated the parties’ collective bargaining agreement when it assigned the work of filling a temporary vacancy in the ballast regulator operator position to a track inspector, rather than to the Claimant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Agreement requires that the Carrier offer the opportunity to fill the temporary vacancy to the senior qualified employee working in a lower-paying classification, because there is no dispute that the Claimant was assigned to a trackman position while Ohlfs was assigned as a track inspector, because the Claimant holds superior seniority over Ohlfs within the Machine Operator B – Ballast Regulator classification, because there is no dispute that the track inspector position is a higher-paying position than is a

trackman position, and because there is no merit to the Carrier's defenses. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof in this matter, and because there was no violation of Rule 22, Section 3(a) or (b) or of Rule 09.

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

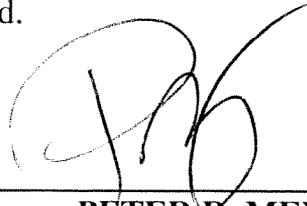
This Board has reviewed the record in this case and we find that the Organization has met its burden of proof that the Carrier violated the Agreement when it assigned a less-senior employee rather than the Claimant to fill a ballast regulator operator temporary vacancy and operate a ballast regulator to clear snow on overtime hours on January 31, 2009. Therefore, the claim must be sustained.

The record reveals that the Claimant has more seniority than employee N. Ohlfs. The record also reveals that employee Ohlfs performed the clearing work at issue on Saturday, January 31, 2009, and the Claimant did not. The Claimant has seniority and qualifications in the appropriate department. Pursuant to Rules 9 and 22, the Claimant should have been assigned to perform that work.

Although the Carrier takes the position that employee Ohlfs was not instructed to operate the ballast operator on January 31, 2009, but performed the operation on his own, the fact remains that the Claimant should have been assigned that work and he was not. Consequently, this Board has no alternative other than to sustain the claim.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: Sept 12, 2011



ORGANIZATION MEMBER

DATED: September 13, 2011