

BEFORE PUBLIC LAW BOARD NO. 7566
CASE NO. 167/AWARD NO. 167

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00018
Claimant: Ken Gunderson

Statement of Claim

“Claim of the System committee of the Brotherhood that:

1. The Carrier violated Rules 1 and 13 of the Agreement when it supplanted its existing workforce in an effort to deny an overtime work opportunity for Mr. K. Gunderson by assigning non-agreement employees to perform the duties of removing and replacing a crossing panel on the Superior Subdivision at Sam Anderson Road, Mile Post 445.9 on June 8, 2018(Carrier's File WC-BMWED-2018-00018 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Gunderson shall be compensated at his applicable rate of pay for eight (8) hours at the applicable time and one-half rate of pay, worked by the non-agreement Stack Bros. employees performing the work in question.”

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

Facts

On June 8, 2018 employees of Stack Brothers, with whom the Carrier had contracted, removed and replaced a crossing panel at the above-noted location. On June 11, 2018 the above-noted claim was timely filed by the Organization. The claim was properly progressed on the property without resolution and advanced to this Board for final and binding adjudication.

Organization Position

The disputed work falls within Rule 1 – Scope and has been customarily and historically performed by Maintenance of Way (MOW) forces. The Carrier’s contention that the work was offered to MOW forces constitutes an admission that it is Scope work. Rule 13N was violated because the Claimant was willing to perform the work on overtime or on his rest day. The work was not offered to the Claimant, with substantiation found in two statements submitted by the Organization.

Carrier Position

The Organization has not offered proof that work was subcontracted. Moreover, the disputed work is not exclusively that of the Organization. The work was offered on the morning safety calls on June 5, 6 and 7, 2018 but neither the Claimant nor others showed interest. The Claimant was fully employed on June 8, 2018 and, therefore, did not lose a work opportunity.

Findings

The Carrier’s assertion that the work was offered to MOW forces establishes the work as within Rule 1 – Scope. Two paragraphs of Rule 13 – Employment Security/Outside Contracting are also relevant to this dispute. Paragraph K states that “The company will have the unilateral right to contract out work within the scope of this agreement and shall not be required to give advance notice of intent to the organization.” An exception exists in Paragraph N, set forth below:

The Company will not use the provisions of this rule to use outside contractors in a way that would supplant the use of the existing workforce during off hours and on rest days in an effort to deny the existing workforce overtime opportunities. This commitment does not require the company to call individuals from another location to perform work in lieu of using an outside contractor.

Because the disputed work clearly falls within Rule 1 – Scope, the consideration before this Board is obvious. If the work was offered to the Claimant and refused, his claim must be denied. If the Carrier did not offer the overtime to the Claimant, Rules 1 and 13 have been violated and the claim must be sustained. The Carrier presents an affirmative defense, asserting that the overtime was offered. The Organization has provided statements asserting that no overtime was offered. The Carrier has not provided any evidence supporting the affirmative defense. In view of the record evidence, the Board is compelled to sustain the claim.

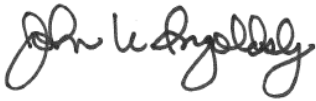
Award

Claim sustained.

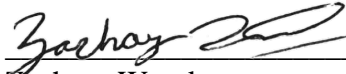
Order

The Board hereby orders the Carrier to compensate the Claimant in accordance with Part 2 of the above-noted claim.

In Dissent:



John K. Ingoldsby
Carrier Member



Zachary Wood
Organization Member



I. B. Helburn
Neutral Member

Dated: December 9, 2021