

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 178

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00013

Claimant: K. Abrahamzon

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rule 22 of the Agreement when it failed to offer and assign Mr. K. Abrahamzon to perform the duties of cold weather patrol work on the Iron Range Subdivision on January 28, 29, 30 and 31, 2019 and instead assigned junior employee D. Shykes thereto (Carrier's File WC-BMWED-2019-00013 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Abrahamzon shall be compensated for thirty-seven and one-half (37.5) hours at the applicable overtime rate of pay.”

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.

The Organization maintains that numerous Rules govern this claim. Rule 1 provides for the Scope of work and recognizes that that work generally recognized as Maintenance of Way work would remain Maintenance of Way work. The work at issue was usual and customary work and therefore the work of the Maintenance of Way employees. Rule 13k provides that the Carrier cannot change the work generally recognized as belonging to Maintenance of Way employees, yet the Carrier did. Rule 13L

provides the expectations of the parties and what must be met by the Carrier. Rule 13M prohibits supplanting overtime opportunities for Maintenance of Way employees.

The Organization claims that the two affected employees, Claimant and the less senior employee who received the assignment, had the same qualifications and were Trackmen. Claimant should have been afforded the overtime because he was the more senior of the Employees. Even if a TIG qualified Trackman was necessary, there was a TIG qualified Foreman in the Hi-Rail truck with Claimant. The Carrier asserts that Claimant was not qualified. The assignment calls for a Trackman who is TIG qualified to perform the assigned job and Claimant is not TIG qualified.

Rule 1 provides:

These rules shall be the agreement between the Canadian National Railway Company (former Wisconsin Central Ltd.) and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of bridges, culverts, buildings, and other structures, tracks, fences, and roadbed, and shall govern the rates of pay, rules and working conditions of such employees. This paragraph shall neither expand nor contract the respective rights of the parties, nor infringe upon the contractual rights of other railroad crafts in effect on the date of this agreement.

Rule 13 Paragraph N provides:

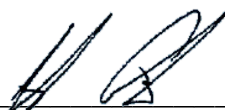
The Company will not use the provisions of this rule to use outside contractors in a way that would supplant the use of the existing workforce during off hours and on rest days in an effort to deny the existing workforce overtime opportunities. This commitment does not require the company to call individuals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

The Carrier can decide the qualifications for a position and Claimant did not possess the TIG qualification. The Organization claims that Claimant was not qualified, but that the foreman in the truck was qualified. The qualification is what was required for the assignment. The Organization has not established that Claimant was qualified for the cold weather patrol work whereas the employee who received the assignment was TIG qualified. The Organization has not established a claim upon which relief can be granted.

Claim denied.



Patrick Crain
Carrier Member



Adam Gilmour
Organization Member



Brian Clauss
Neutral Member

Dated: December 20, 2023