

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION)
IBT RAIL CONFERENCE)
and)
CANADIAN NATIONAL/WISCONSIN)
CENTRAL LTD.)

Case No. 18
Award No. 18

Claimant: W. Neuens

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

1. The Carrier violated the Agreement when it failed to bulletin a machine operator position operating a snowfighter machine beginning February 2, 2011 through March 8, 2011 and instructed Foreman J. Dake instead of Claimant W. Neuens to operate the snowfighter machine during the claim period (Carrier's File WC-BMWED-2011-00011 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant W. Neuens must be compensated for all straight time and overtime hours rendered by Mr. Dake or any other employee who operated the snowfighter machine involved during the claim period for the loss of work opportunities to the Claimant."

Findings:

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.

Parties to said dispute were given due notice of hearing thereon.

The Organization contends that the Agreement was violated when the Carrier failed to bulleting the position of Snow Fighter – a Machine Operator B position. Instead, the Carrier assigned a Mobile Foreman to do the work for more than the 30 days allowable under the Agreement. Claimant was furloughed and was qualified to perform the work.

The Carrier responds that the assignment was a temporary assignment and was assigned as needed during the snow season of February 2 through March 8, 2011. Employee Dake did not work 30 straight days in the assignment. He worked when the situation required him to remove snow. There are snow emergencies and the Carrier has a right to temporarily assign employees to perform snow removal operations.

Rule 9 provides for when a qualified and lower rated employee should be offered a position:

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When vacancies or new positions of 30 days or less are filled, such vacancies will first be offered to senior qualified employees working in a lower paying classification that is assigned to the headquarter location or gang on which the vacancy exists.

The burden is on the Organization to establish the violation. Here, the evidence indicates that Employee Dake was called on an emergency basis and worked the Snow Fighter for 19 days during the time frame. Although the Organization alleges that the Carrier is attempting to circumvent the Agreement by understaffing the Snowfighters and then citing a snow emergency, there is no support for that argument.

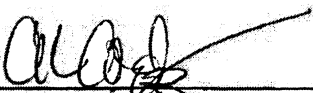
The Organization has not met the burden.

Award:

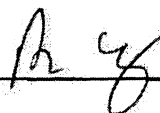
Claim denied.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on November 10, 2015