

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 180

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00001

Claimant: G. Wenner

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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. G. Wenner by assigning non-agreement employees, employed by Holland LP to perform the duties of a welder helper on the Superior Subdivision, at Nopeming Junction Minnesota on December 19, 2018 (Carrier's File WC-BMWED-2019-00001 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant G. Wenner shall now be compensated for a total of seven and one-half (7.5) hours at the applicable time and one-half rate of pay at the applicable welder helper 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 13N prohibits supplanting overtime opportunities for Maintenance of Way employees.

The Organization claims that Organization-represented forces were available to perform this snow plowing work. Instead of Claimant, the Carrier used contractors Stack Brothers or Wren Works to perform the duties of snow plowing. These contractors supplanted Carrier forces.

The Organization maintains that the Carrier defense is not persuasive. The question is whether Organization forces were available and had customarily performed this work. Moreover, the Carrier claim of specialized equipment should be rejected because the Organization sent an April 1, 2019 letter to the Carrier detailing the locally-available Carrier equipment on Carrier property in the Pokegama Yard where some of the removal work was performed. The letter was never refuted.

The Carrier responds that the claim should be denied because the Organization has failed to prove a claim for which relief should be granted. The Carrier did not violate the Agreement when it assigned outside forces to perform the welder work in an area where Claimant did not work. Further, there was no welder for the assignment, so a welder helper was not needed. In a March 11, 2019 letter, the Carrier responded to the claim:

We do not have the equipment available to use that the contractors were using. The contractors were using a plow truck, dump truck, skid steer, salt truck, dozer, and grader to do the claimed work. If we do not have the correct equipment to do the work, our employees cannot do it.

A July 12, 2019 Carrier letter provided:

As outlined in the response to the original claim and discussed again at conference, The work at Nopeming Junction on the Superior Subdivision is not regularly performed by the claimant, Gunnar Wenner, because he is headquartered out of Proctor, MN. This claimed work on the Superior Subdivision is regularly performed by the Pokegama employees. Per Rule 13N, the company does not have to call employees from another location to perform work in lieu of using an outside contractor.

Furthermore, the Claimant was not qualified to perform the claimed work. The Claimant is a welder helper but there was no welder available for the claimant to help. Since a welder was not available, the contractor was

brought in to perform the claimed work. Please note that there has been an open welder position available for some time before the date of the claim.

The Carrier also responds that there is insufficient evidence in the record to support the claim. There is no evidence that the work cited in the claim was ever performed. The claim should be denied due to lack of documentation.

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.

Rule 13 Paragraph L provides:

The provisions of paragraph K remain in effect when forces are temporarily reduced when a suspension of operations in whole or in part is due to a labor dispute between the company and any of its employees and during temporary force reductions under emergency conditions, such as flood, snowstorm, hurricane, tornado, earthquake, fire, or a labor dispute other than as identified above, provided that such conditions result in suspension of operations in whole or in part.

In a March 11, 2019 letter, the Carrier provided:

The work at Nopeming Junction on the Superior Subdivision is not regularly performed by the claimant, Gunnar Wenner, because he is headquartered out of Proctor, MN. This claimed work on the Superior

Subdivision is regularly performed by the Pokegama employees. Per Rule 13N, the company does not have to call employees from another location to perform work in lieu of using an outside contractor.

Here, the Organization attempts to refute the Carrier defense that Claimant was not headquartered out of Proctor by arguing that Nopeming is closer and on the Superior Subdivision. However, the Organization does not address the Carrier defense that the work was normally performed by Nopeming-assigned forces. The Carrier defense that Claimant was not entitled to the work because he was headquartered in a different location than the work is un rebutted.

Claim denied.



Patrick Crain

Carrier Member



Adam Gilmour

Organization Member



Brian Clauss

Neutral Member

Dated: December 20, 2023