

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 182

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00004

Claimant: S. Williams

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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. S. Williams by assigning non-agreement employees, employed by Lakehead Constructors to perform the duties of cleaning up ore pellets utilizing a vac truck, along the right of way and on the track and roadbed, on the Missabe Subdivision and in and around the Duluth Docks, in Duluth, Minnesota beginning on December 18, 2018 and continuing on a regular daily basis (Carrier's File WC-BMWED-2019-00004 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Williams shall now be allowed pay at the applicable rate of pay for an equal proportionate share of all overtime and regular man-hours worked by the non-agreement employees performing vac truck work.”

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. Here, the Claimant was available to perform the work.

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 work of vacuuming ore spilled ore pellets. The Carrier abolished the Vacuum Truck position in November and then used outside forces in December to perform the work. Instead of Claimant, the Carrier used contractors to vacuum. These contractors supplanted Carrier forces from December 18 and ongoing.

The Organization maintains that the Carrier defense is not persuasive. The question is whether Organization forces were available and had customarily performed this work. Rule 9 controls:

#### **RULE 09-TEMPORARY VACANCIES**

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

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 Vacuuming work beyond what it already paid Grievant for December 18, 2018. Because Claimant took a personal day on December 20, 2018, he would not have been able to perform the work. The Carrier denied any January 2019 work. The Carrier later agreed that work was performed by contractors on January 9 and 10, 2019, but asserted that it was a less than thirty-day assignment, Grievant had bid to another position and was employed, so they were not required to offer the work to Grievant.

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 Carrier cites various awards in support of denying the claim. In those awards, the claim was denied due to a lack of documentation. Those denied claims had a lack of documentation just as this claim.

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.

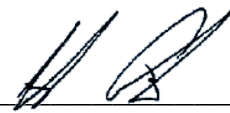
The Carrier defends that it did not use outside forces to perform Vacuum Truck work after December 20, 2018. However, the record contains the statement of the flagger who flagged for the two contractor Vacuum trucks that worked on January 9 and 10, 2019. The Carrier later admitted that the contractors performed the work on January 9 and 10, 2019, but denied that Claimant was available to perform the work and that it did not need to be bulletined because it was not full-time work within the definition of the Agreement.

As the Organization notes, Rule 9 addresses this situation. According to Rule 9, Claimant should have been offered the assignment. Any overtime performing the January 2019 work would have been available to Claimant.

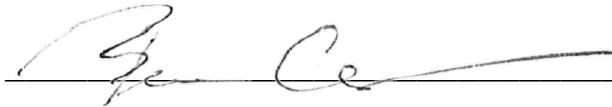
Claim sustained in part for the January 9, and January 10, 2019, Vacuum Truck work. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Patrick Crain  
Carrier Member



Adam Gilmour  
Organization Member



Brian Clauss  
Neutral Member

Dated: December 20, 2023