

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 184

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00038

Claimant: G. Wenner

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 Lakehead Constructors, to perform the duties of changing defective rail, at Iron Junction on the Missabe Subdivision on November 22, 2018 (Carrier's File WC-BMWED-2018-00038 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 nine (9) hours at the time and one-half 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 claims that contractors changed rail at Iron Junction on November 22, 2018. The Organization claims that this work was reserved to Carrier forces and normally done by Organization-represented forces. The Carrier disputes whether the work was performed. As indicated in the on-property handling, Carrier claimed the work was not performed as alleged. In a February 14, 2019 letter, the Carrier addressed the claim:

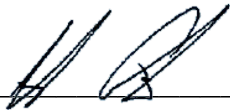
It has been confirmed by the supervisor of the territory and also through contractor invoices that there were in fact no employees of Lakehead Constructors changing defective rail at Iron Junction on the Missabe Subdivision on November 22, 2018. As a result, there is no basis for this claim.

Here, there is a factual dispute with one party claiming work was performed by Lakehead Constructors and the other party claiming that there were no Contractors working that day. Where there is a factual dispute like that presented in this matter, the Board cannot determine which version is accurate. Due to the factual dispute, the Claim is therefore denied.

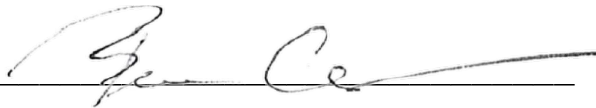
Claim denied.



Patrick Crain
Carrier Member



Adam Gilmour
Organization Member



Brian Clauss
Neutral Member

Dated: December 20, 2023