

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 186

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00028

Claimants: J. Baumann, M. Bobiak, J. Chlebowski, B. Hendrickson
C. Johnson, L. Kamunen, C. Marvin, J. McCarthy, D. Merrier,
L. Newsome, D. Patt, C. Sheasby, C. Sinnaeve, R. Westrich

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rule 22 of the Agreement when it refused to compensate Messrs. J. Baumann, M. Bobiak, J. Chlebowski, B. Hendrickson, C. Johnson, L. Kamunen, C. Marvin, J. McCarthy, D. Merrier, L. Newsome, D. Patt, C. Sheasby, C. Sinnaeve and R. Westrich for time worked before and after their regularly assigned work period beginning on September 9, 2018 and continuing on a regular daily basis (Carrier's File WC-BMWED-2018-00028 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Baumann, M. Bobiak, J. Chlebowski, B. Hendrickson, C. Johnson, L. Kamunen, C. Marvin, J. McCarthy, D. Merrier, L. Newsome, D. Patt, C. Sheasby, C. Sinnaeve and R. Westrich shall be compensated pay at the applicable rate of pay for all time spent working for the Carrier before and after their regularly assigned work period, beginning sixty (60) days retroactive from the date of the initial claim letter and continuing on a regular daily basis.”

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's position is summarized in the submission at page 2:

Beginning on September 9, 2018 and continuing on a regular daily basis, the Carrier required the Claimants to perform pre-trip vehicle inspections, required duties of electronic logbook maintenance and recording and operating the Carrier's vehicles. The work performed is fundamental to the Claimants' job duties and requires compensation in accordance with the Agreement. In this case, the Carrier violated the Agreement when it failed and refused to compensate the Claimants for time worked before and after their regularly assigned work period performing the duties of pre-trip vehicle inspections, required duties of electronic logbook maintenance and recording and operating the Carrier's vehicle.

This dispute centers around the Carrier's violation of the Agreement when on the cited claim dates, the Carrier failed and refused to compensate the Claimants for time worked before and after their regularly assigned work periods, performing required pre-trip vehicle inspections, required duties of electronic log book maintenance and recording and operating the Carrier's vehicles.

In support, the Organization cites Rule 22, which provides:

RULE 22 - OVERTIME

Section 1. Compensation

- A. Time worked before or after and continuous with a regularly assigned work period shall be computed on an actual minute basis and paid for at the rate of time and one-half rates, with double time computed on an actual minute basis after sixteen hours of work in any twenty-four (24) hour period computed from starting time of the employee's regular shift. If the employee does not have a regular shift, double time computed on an actual minute basis will begin after sixteen hours of work in any twenty-four (24) hour period commencing with the time the employee is directed to begin work.

* * *

- C. Employees will not be required to suspend work during regular hours to absorb overtime.

The Carrier responds at pages 4 and 5 of the submission by citing Rule 18:

RULE 18 - POSITIONS WITHOUT FIXED HEADQUARTERS

- A. The Carrier may establish positions without fixed headquarters to work over the entire seniority territory wherever their use may be required. Time of employees assigned to such gangs will begin and end at assembly point, designated by management, at or near the work site. The carrier will insure that adequate parking is available at the designated assembly point.

* * * *

- I. Employees assigned to positions under this Rule will, in addition to any other compensation to which they are entitled to under this Agreement, be entitled to a daily per diem allowance to defray the cost of meals, lodging and travel to and from their residences as follows:
 1. Employees whose residence is seventy (70) or fewer highway miles from the gang's worksite will receive \$35.00 for each day worked. This amount will increase on July 1, 2014 to \$36.00 and on July 1, 2015 to \$37.00.
 2. Employees whose residence is more than seventy (70) highway miles from the gang's worksite will receive \$80.00 for each day worked. This amount will increase on July 1, 2014 to \$82.00 and on July 1, 2015 to \$84.00.

Each of the claimants outlined in the appeal charge per diem on a daily basis. Clearly, the claimants agree that their work site is not where they begin driving a company vehicle as there were 297 instances just in the 60 days prior to the claim date where employees charged the large per diem, which would indicate they believed their work site was over 70 miles away from their residence.

In the January 19, 2019 correspondence to the Organization, the Carrier responds to the claims, in relevant part:

First and foremost, the claim as presented is vague and it is difficult, if not impossible, to provide a comprehensive response to. No specific claimants were identified, no specific dates, times or hours of this alleged work prior to the start of the work period were identified. It is unclear if the claimants are mobile or headquartered or what locations, parts or repairs are being referred to when the Organization refers to them allegedly "traveling from one location to another in a company vehicle with company supplies in order to ultimately deliver parts and/or equipment, and/or repair company owned equipment". Employees are appropriately compensated when they travel from one work location to another during their work day.

Notwithstanding the above, the Carrier has never refused to compensate "Mobile Work Equipment Mechanics and Mobile Work Equipment Lead Mechanics", for "time worked before and after their regularly assigned work period" as the claim alleges. As the Organization is well aware, Mobile Work Equipment Mechanics and Mobile Work Equipment Lead Mechanics are being compensated in the same manner that they have been for decades without issue under the WC BMW agreement. Nothing has changed in our compensation practices to prompt this claim.

Here, the Carrier raises a number of valid procedural defenses. On its face, the claim lacks specificity about date, times, locations, affected employees, and amount of overtime sought. The Organization raises a generalized claim that employees are forced to perform pre-shift and post-shift vehicle checking and logging, but cite no examples. On the merits, the claim fails because the Claimants are already compensated for the claimed work.

Claim denied.

A handwritten signature in dark ink, appearing to read "P. Crain", is written over a horizontal line.

Patrick Crain

Carrier Member

A handwritten signature in dark ink, appearing to read "A. Gilmour", is written over a horizontal line.

Adam Gilmour

Organization Member

A handwritten signature in dark ink, appearing to read "Brian Clauss", is written over a horizontal line.

Brian Clauss

Neutral Member

Dated: December 20, 2023