

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 188

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00017

Claimant: M. Barnes

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rule 22 of the Agreement beginning on February 3, 2019 and continuing through the morning of February 4, 2019, when it failed to offer and assign Headquartered Foreman M. Barnes to perform the duties of providing track protection and snow removal in the Proctor Yard on the Missabe Subdivision and instead assigned Machine Operator J. Borich thereto (Carrier's File WC-BMWED-2019-00017 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Barnes shall now be compensated for twelve (12) hours at the applicable time and one-half rate of pay, at the applicable headquartered foreman 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 the Agreement was violated when a junior employee was offered snow blower overtime work and the work was not offered to Claimant. The Organization maintains that the assigned gang is entitled to preference for overtime. Claimant was the senior employee on the gang and should have been offered the overtime. The person to whom the overtime was offered and who performed the overtime is not

from the assigned gang and should not have been offered the overtime. The Carrier violated the agreement when it offered the overtime to somebody not on the assigned gang.

The Carrier responds at submission page 4:

Notwithstanding the fact that the Organization did not meet its burden of proof, the Carrier did not violate the Agreement. As indicated in the on-property handling, the overtime opportunity was offered to the senior employee in the required job classification. The Organization acknowledged that Mr. Borich is senior to the Claimant. Therefore, no violation of the Agreement occurred.

The pertinent Rule of the Agreement reads as follows:

Section 3. Preference for overtime work.

- A. When work is to be performed outside the normal tour of duty and not in continuation of the day's work, the senior active employee in the required job class in the assigned gang will be given preference for overtime work ordinarily and customarily performed by them.

In the February 7, 2019 correspondence, the Organization asserted:

Foreman ordinarily and customarily provide track protection and perform snow removal and Machine Operators ordinarily and customarily perform machine operation.

In the April 8, 2019 correspondence, the Carrier replied to the claim:

Jason Borich is senior to the claimant, Matthew Barnes, so he was called to work the night of February 3, 2019. Both employees can provide track protection, so the senior employee was called. It is unclear how or why the Organization feels that track protection and cleaning switches is Foreman work. The work in question both employees are qualified and able to perform and therefore the senior employee was offered the work.

The controlling Rule for the instant claim is Rule 22, Overtime. Rule 22 provides in relevant part:

- D. Work in excess of forty (40) straight time hours in any workweek shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another.

* * *

Section 3. Preference for overtime work.

- A. When work is to be performed outside the normal tour of duty and not in continuation of the day's work, the senior active employee in the required job class in the assigned gang will be given preference for overtime work ordinarily and customarily performed by them.

Here, the Organization claims that the work should have been offered to the Foreman despite being junior to the other employee, a Machine Operator on the theory that Foremen perform protection and snow removal and that Machine Operators operated machines. The Organization does not support with evidence through statements or other documentation the contention that snow removal and protection are performed by Foremen. The Carrier defends asserting that both of the employees were qualified to perform protection and snow removal and the senior employee received the overtime. These positions are at odds and neither party offers any evidence in support of their positions. The burden is on the Organization to establish a violation of the Agreement. The Organization has not met that burden.

Claim denied.



Patrick Crain

Carrier Member



Adam Gilmour

Organization Member



Brian Clauss

Neutral Member

Dated: December 20, 2023