

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 189

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00014

Claimants: R. Dowell, W. Fields

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rule 22 of the Agreement when it failed to offer and assign Messrs. R. Dowell and W. Fields to perform the duties of snow removal on the Saukville Subdivision beginning on January 28, 2019 and continuing until January 29, 2019 and instead assigned junior employees G. Lewzader and G. Snyder thereto (Carrier's File WC-BMWED-2019-00014 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimants R. Dowell and W. Fields shall now be compensated for twelve (12) hours at the applicable time and one-half rate of pay, at the applicable headquartered foreman and trackman rates 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.

When declining the claim in an April 5, 2019 correspondence, the Carrier manager noted:

This was a cold weather emergency. The Waukesha Night crew was covering the main line, so we had the Fond du Lac crew clean three switches on the Saukville Subdivision. The Waukesha Day crew was not brought in because they would not be able to cover the main line the next day.

The same rationale is cited in other Carrier correspondence. The Organization responded in the April 11, 2019 correspondence:

The Carrier argues that the Claimants were not “brought in because they would not be able to cover the main line the next day.” Rule 22 Section 3A does not state that the Carrier only has to follow the language contained in that rule in circumstances where the Carrier determines that the employees will be able to cover the main line the next day. This language simply does not exist in the agreement and cannot be relied upon in this situation.

Clearly if the Carrier was given such leeway as they suggest, the clear and unambiguous language in Rule 22 3A would be eroded and could effectively nullify Agreement viability. Furthermore, if this logic was to be accepted, any overtime could be handed out at the Carrier’s discretion, regardless of seniority and ordinary and customary work, as all overtime could potentially affect the ability to cover the main line the next day. This clearly is not what the authors of the agreement intended when writing Rule 22 Section 3A.

The Carrier agrees that it denied the overtime opportunity to the Waukesha Crew. The Carrier maintains that it was justified in the denial because the overtime would have rendered the Waukesha Crew unable to perform their next normally-scheduled shift. The Carrier also notes the 4.5 hours of overtime worked by the day crew on January 29.

The Organization makes a valid argument that the Agreement does not give the Carrier authority to deny offering overtime because of how it may affect subsequent assignments. The Carrier can cite neither Agreement language nor Awards to support the position that it can deny overtime when it wishes. As the Carrier notes, the Claimants were on the Waukesha Crew and but for a manager’s concern about the next work day, they would have been offered the overtime. The Claimants should have been offered the overtime.

Claim sustained. 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