

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 190

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00005

Claimant: J. VonRueden

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to assign Mr. J. VonRueden to work as a foreman assigned with the night section gang at Proctor, Minnesota beginning on November 17, 2018 and continuing on a regular daily basis (Carrier's File WC-BMWED-2019-00005 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. VonRueden shall now be allowed pay at the time and one-half-and double-times rates of pay at the headquartered foreman rate of pay for all hours worked by the Proctor night section, 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 claims that the Carrier violated the Agreement when it worked a night section gang at Proctor without a Foreman. The Agreement Rule 17D requires a Foreman working on a night section gang.

The Carrier responds in its submission:

The Organization has submitted a claim for alleging that Claimant was denied an overtime opportunity for service not performed. Furthermore, as indicated in the on-property correspondence, Claimant was working his bulletined assignment for the duration of the claim. There is no Agreement provision that requires that Claimant be required to fill the assignment of 2 two separate positions as alleged by the Organization. The night gang foreman was bulletined per the Agreement, and had gone without a bid.

* * * *

[T]he agreement indicates that "Positions established under this Section shall consist of at least a Track Foreman and one additional position". This has been done, the position is established and continues to be bulletined. The Carrier met the requirement of the Agreement. Further, the claim incorrectly indicates that "Clearly Rule 17 D requires a Foreman work with this gang as laid out in this rule. The Carrier has violated the agreement as there has not been a Foreman working with this night section for the entire period of this claim." This language is not found in Rule 17D or in any portion of the agreement. The request for the Day Foreman, who has had every opportunity to bid the Night Foreman job, to be compensated for the entire night shift in addition to his regular shift is unfounded and unsupported by any language in the agreement.

The Organization maintains that the language of Rule 17D, wherein it provides the assignment "shall consist," is an absolute requirement to staff the position. According to the Organization, the Foreman position cannot remain vacant and must be filled by the day shift Foreman working overtime. The Carrier maintains that it bulletined the Track Foreman position and has received no bids. The Carrier has complied with the Agreement.

Rule 17 D provides:

The Company may establish Night Section Gangs at any headquarters location, provided the headquarters location has positions established under this Rule that have a starting time between 5:00 AM and 8:00 AM. Positions established under this Section shall consist of at least a Track Foreman and one additional position. The starting time for Night Section Gang positions shall be between 5:00 PM and 8:00 PM and such Gangs shall have five (5) consecutive work days of eight (8) hours duration and shall have Saturday and Sunday as rest days. Employees assigned to such gangs will receive, in addition to any compensation otherwise provided for in this Agreement, a differential of fifty cents (\$0.50) per hour for each hour worked between starting time and 5:00 AM

The first rule of contract interpretation is to review the plain language of the Agreement. If the plain language of the provision is readily understood by its usually and customary meaning, then there is no need to resort to other guides to contract interpretation.

The Organization uses their interpretation of the meaning of the words “shall consist” in Rule 17D to argue that establishing the Track Foremen position does not satisfy the totality of the rule. The Carrier maintains its position that it had established the Track Foreman position and it continued to be bulletined.

The plain language of the Agreement provides that if the Carrier establishes night gangs, then “[p]ositions established under this Section shall consist of at least a Track Foreman.” Here, the operative term is “establish.” The Carrier established the position when it bulletined the position and thereby satisfied the requirements of Rule 17D. If the position required the Foreman position to be staffed, then there would be language to include that requirement. 17D does not provide that the “positions established must be staffed.”

The Carrier established the position. Nobody bid to the overnight position. There is nothing in the Agreement or cited awards that require the position to be staffed by a Foreman working overtime when nobody has bid the position.

Claim denied.



Patrick Crain

Carrier Member



Adam Gilmour

Organization Member



Brian Clauss

Neutral Member

Dated: December 20, 2023