

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 191

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00027

Claimants: D. Vicklun, L. Shiflett, A. Eskola

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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 Messrs. D. Vicklun, L. Shiflett and A. Eskola by assigning non-agreement employees, employed by RJ Corman, to perform the duties of surfacing track on the Missabe Subdivision at Mile Post 63.8 on October 27, 2018 (Carrier's File WC-BMWED-2018-00027 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimants D. Vicklun, L. Shiflett and A. Eskola shall now each be compensated at the applicable rate of pay of each of their respective positions for a total of nine (9) hours.”

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 maintains that numerous Rules govern this claim. Rule 1 provides for the Scope of work and recognizes that that work generally recognized as Maintenance of Way work would remain Maintenance of Way work. The work at issue was usual and customary work and therefore the work of the Maintenance of Way employees. Rule 13K provides that the Carrier cannot change the work generally

recognized as belonging to Maintenance of Way employees, yet the Carrier did. Rule 13L provides the expectations of the parties and what must be met by the Carrier. Rule 13M prohibits supplanting overtime opportunities for Maintenance of Way employees.

The Organization claims that this work is reserved to Organization-represented employees. The claim should be granted because of the Maintenance of Way equipment regularly traverses this property and thereby shows that the forces could do the work. Because the forces regularly traverse this area, they should be doing the work that was assigned to outside forces.

The Organization continues that it requested GPS data from the Carrier as part of the claims processing. Because the Carrier refused to supply the requested data or address the issue in the claims processing, the Carrier should be held to that denial and all the inferences that can be drawn from the refusal. The Board should also ignore the Carrier defenses about the Track Supervisor as irrelevant to the instant claim.

The Carrier maintains the claimed work was not performed. The claim was amended and therefore procedurally flawed. Further, the employees traveling in the area does not mean they were entitled to the work. GPS data shows the crew truck was parked on the claim date.

Rule 13 N does not apply because the employees do not customarily perform the work. Track Supervisors are not required by Rule 13N to consider all mobile employees for overtime opportunities. This crew was not under the supervision of the Track Supervisor with responsibility for the area and could not have been assigned the work.

Rule 13 Paragraph N provides:

The Company will not use the provisions of this rule to use outside contractors in a way that would supplant the use of the existing workforce during off hours and on rest days in an effort to deny the existing workforce overtime opportunities. This commitment does not require the company to call individuals from another location to perform work in lieu of using an outside contractor.

Rule 18A provides for positions without fixed territories in relevant part, “The Carrier may establish positions without fixed headquarters to work over the entire seniority territory wherever their use may be required.”

There is no dispute that the Claimants are on the Lake Zone Surfacing Gang. The Lake Zone includes territories of various Track Supervisors that include the territory where the complained-of work was performed. The Organization asserts that the Claimants' Gang traveled over MP 63.8 on the day of the violation. The Carrier controls GPS data on the railroad and has not produced the GPS data for the Lead Tamper to confirm the assertion or refute the assertion. As the Organization notes, the Carrier has not refuted the assertion that the Gang traversed the area on October 27, 2018. The next question is whether the work should have been offered to the Lake Zone Surfacing Gang.

The evidence shows that the Lake Zone Surfacing Gang works on the complained-of territory under various Track Supervisors. The Gang was available to do the work on overtime on the territory in their Zone. The Carrier should have offered the overtime work to the Lake Zone Surfacing Gang.

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