

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 193

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00035

Claimants: J. Bryant, P. Schwartz

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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. J. Bryant and P. Schwartz by assigning non-agreement employees (MBS), to perform the duties of brushcutting along the right of way and on the track and roadbed across the upper peninsula of Michigan on the Valley Zone, on October 26, 2018 and continuing on a regular basis (Carrier's File WC-BMWED-2018-00035 WCR)
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Bryant and P. Schwartz shall now be allowed pay at the applicable rate of pay for an equal proportionate share of all overtime and regular manhours worked by the non-agreement MBS employees performing brushcutting on the Valley Zone and specifically in the upper peninsula of Michigan.”

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 cites PLB 7566 Award 50 and Award 62 as instructive. In those matters, the Organization prevailed on a claim that the Maintenance of Way work was supplanted by outside forces.

The Organization claims that the claim should be granted because cutting work has historically been performed by Maintenance of Way employees. The Organization continues that exceptions to the rule do not apply in the instant matter. Further, the Carrier defense that Maintenance of Way forces were fully employed is not a persuasive position.

The Carrier maintains that no employees were on furlough and that Claimants were working the same hours as the contractors. The Carrier notes the Claimants worked 78 hours of overtime from October 26, 2018, through November 30, 2018. Further, the contractor was not working during the Claimants' off hours or off days. No overtime was supplanted. Because the work was less than 30 days, there was no bulletining requirement. According to the Carrier, the claim should be denied.

The parties do not dispute that the Carrier abolished the brush cutter positions on October 25, 2018, and subsequently the Carrier assigned non-agreement contractors to perform brush cutting. Brush cutting is work that was customarily performed by Organization forces. The Organization has established a violation of the Agreement.

The inquiry turns to damages. The Organization claims a proportionate share of pay for the hours Claimants would have worked if brush cutting. The Carrier maintains that Claimants received 78 hours of overtime during the complained-of period.

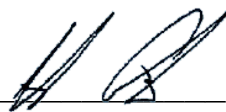
The record is unclear about whether the contractors performed work during periods which would have been during off time for Claimants. If Claimants were not working during those available periods, then they are entitled to be paid for the missed brush cutting overtime. The claim is granted, and the matter is remanded to the parties

to determine whether there was missed overtime opportunity for the Claimants. If so, they should be paid accordingly.

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