

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 200

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00043

Claimants: T. Kauther, D. Shykes, D. Johnson,
J. Borich, A. Eskola, C. Keppers

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 its Maintenance of Way forces, by assigning non-agreement employees to perform the duties of cutting rail, drilling and the installation of joint bars on the Missabe Subdivision at Mile Post 4.38 on July 1, 2019 (Carrier's File WC-BMWED-2019-00043 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimants T. Kauther, D. Shykes, D. Johnson, J. Borich, A. Eskola and C. Keppers shall now be compensated at their applicable rate of pay for ten (10) hours at the applicable time and one-half rate and double-time 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.

The Organization claims that contractor Kraemer North America performed work that was reserved to Organization-represented employees on July 1, 2019. The contractors supplanted Carrier forces. If the Carrier assigned the claimed work, Claimants would have overtime opportunities.

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 13N prohibits supplanting overtime opportunities for Maintenance of Way employees.

The Organization claims that Organization-represented forces were available to perform this rail work. Instead of Claimants, the Carrier used contractors. These contractors supplanted Carrier forces.

The Organization maintains that the Carrier defense is not persuasive. The question is whether Organization forces were available and had customarily performed this work.

The Carrier responds that the claim should be denied because the Organization has failed to prove a claim for which relief should be granted. The Carrier did not violate the Agreement when it assigned outside forces to perform the work

The Carrier also responds that there is insufficient evidence in the record to support the Claim

Rule 1 provides:

These rules shall be the agreement between the Canadian National Railway Company (former Wisconsin Central Ltd.) and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of bridges, culverts, buildings, and other structures, tracks, fences, and roadbed, and shall govern the rates of pay, rules and working conditions of such employees. This paragraph shall neither expand nor contract the respective rights of the parties, nor infringe upon the contractual rights of other railroad crafts in effect on the date of this agreement.

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 13 Paragraph L provides:

The provisions of paragraph K remain in effect when forces are temporarily reduced when a suspension of operations in whole or in part is due to a labor dispute between the company and any of its employees and during temporary force reductions under emergency conditions, such as flood, snowstorm, hurricane, tornado, earthquake, fire, or a labor dispute other than as identified above, provided that such conditions result in suspension of operations in whole or in part.

The Organization claims that cutting rail, drilling, and installing joint bars on the Missabe Subdivision is specifically reserved pursuant to Rule 1 to Maintenance of Way employees. There can be no dispute that the work involved herein is customarily performed by the Carrier's employees and reserved to Maintenance of Way forces in accordance with Rule 1 - Scope.

The Carrier maintains it did not violate the Agreement. Claimants were working as a section gang and bridge work has not historically been performed by the Claimants. Also, the Claimants are not qualified to perform the claimed work. Further, the Agreement does not prohibit using outside forces to supplement Carrier forces. In the April 6, 2019 correspondence, the Carrier provided:

This was a bridge project owned by the Buildings and Bridges Department. They are qualified to do all track work, the Track Department employees (including these claimants) are not qualified to do bridge work.

In an August 15, 2019 letter, the Organization expressed confusion at the term "owned" because it did not appear in the Agreement, and asserted:

Rule 1-Scope states in pertinent part: "inspection, construction, repair and maintenance of bridges, culverts, buildings and other structures, tracks fences and roadbed." Clearly this track was covered under the scope rule.

The work in question did not require any fall protection or other specific Bridge and Building equipment or qualifications. The work on this section of track has been routinely and historically performed by the Claimants.

Furthermore, this track is accessible from a road that runs parallel to the track which could have been used to station the Claimants' equipment to perform the repair. If that set up did not work, the Claimants could have set on the track and performed the work just as they do in other track maintenance scenarios.

Again, this track did not require any specialized equipment or qualifications to complete the job at hand. The Carrier has failed to identify how the Claimants were not qualified to perform the work in question.

The Carrier responded in a December 6, 2019 correspondence:

The appeal indicates that "The work in question did not require any fall protection or other specific Bridge and Building equipment or qualifications. The work on this section of track has been routinely and historically performed by the Claimants." This is incorrect, as the Company stated at conference, the work done was on a steel deck bridge that needed insulators changed out under the rail, which is work done by the Bridges and Buildings Department. Per the Organization's request at conference, attached is a track chart (Exhibit A) that shows the bridge's location.

The Organization took issue with the Carrier response in a correspondence of March 6, 2020:

The Carrier argues that the Claimants were not qualified for the rail change on the bridge in question. This bridge does not require any fall protection or any other special qualifications that would prohibit the Claimants from performing their work.

Next, the Carrier states that the rail change required "insulators" to be changed out under the rail. These "insulators" are merely rubber pads that are positioned under the rail during the rail change. There is no special qualifications to handle a rubber square pad. This is simply a red herring to shift from the fact that the Carrier called in a non-agreement contractor to perform work that historically has been performed by the Claimants.

In fact, the bridge Supervisor called the Claimants Supervisor to have them perform this work. Unfortunately the Claimants Supervisor replied that he would rather call in a contractor.

In fact, there are multiple locations on the territory that the Claimants ordinarily and customarily take care of, that are equipped with the rubber "insulators" in question. The Claimants have changed these "insulators" in the past, specifically at the Oliver Bridge.

There is no argument that this is on a bridge, the argument is that the section takes care of rail changes on bridges in this area unless it requires fall protection, which in this case, it most certainly did not.

Again, this track did not require any specialized equipment or qualifications to complete the job at hand. The Carrier has failed to identify how the Claimants were not qualified to perform the work in question.

The burden is on the Organization to establish a violation of the Agreement by showing the improper assignment of the work to outside forces. Rule 1 indicates that bridge work is work normally performed by Organization forces. Further, there is no dispute that safety equipment was not needed for this work. The Carrier's defense is that this work was "owned" by the Building and Bridges Department and that Claimants were not qualified.

An examination of the record and submissions support the Organization's arguments. The Carrier does not dispute that the work was performed by outside forces, however, the Carrier does not adequately refute the Organization's claim. The Organization refuted the defenses by asserting that this specific work of changing rubber insulators was work normally done and previously done on this bridge. The Carrier has not refuted that the Organization has done this work in the past on this bridge.

Accordingly, the claim is 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