

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 201

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00031

Claimant: A. Hegeman

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 Mr. A. Hegeman by assigning non-agreement employees, employed by Railworks and Holland to perform the duties of welding on the Waukesha Subdivision at Mile Post 61.4 and Mile Post 58.2 on April 13 and 14, 2019 (Carrier's File WC-BMWED-2019-00031 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Hegeman shall now be compensated at the welder rate of pay for a total of twenty-one (21) hours at the applicable time and one half rate 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 outside forces performed work that is reserved to Organization-represented employees. In support, the Organization offers the statement of Claimant that the work was performed by outside forces. The Carrier does not dispute that the work was done by outside forces, but disputes nonetheless because the overtime was properly offered to employees but that Claimant did not accept the offered overtime.

The Carrier maintains that Claimant cannot now complain and the claim should be dismissed. The Carrier's submission provides at page 4:

As indicated in the on-property handling, the overtime opportunity was offered to the Claimant in the same manner in which planned over time events have historically be offered, via the morning conference call that all employees are expected attend. As outlined in the response to the original claim and discussed again at conference, the Company maintains that Track Supervisor Fred Hoppe asked on the morning call multiple times the week of April 8th - 12th, 2019, if anyone could weld or flag for the contract welders that upcoming weekend. No one said they could or wanted to work that weekend. The Claimant was offered the overtime, but did not want to work.

The appeal indicates "if Mr. Hoppe had offered everyone this work collectively, the agreement is clear that it is to be offered to the senior, qualified, employee at the headquarter location that ordinarily and customarily performs the work in question. A blanket offer of overtime would not meet this requirement." It is the Company's position that a blanket offer does meet the requirements of the agreement because, in the blanket offer, the senior, qualified, employee at the headquartered location that ordinarily and customarily performs the work in question was, in fact, offered overtime. If the Claimant was actually available and willing to work, he should have made himself available and he would have received the work.

In the June 19, 2019 correspondence, the Carrier provided:

Track Supervisor Fred Hoppe asked on the morning call multiple times the week of April 8th -12th, 2019, if anyone could weld or flag for the contract welders that upcoming weekend. No one said they could or wanted to work that weekend. The Claimant, Andrew Hegeman, was offered the overtime, but did not want to work.

In a June 28, 2019 statement, the Claimant refuted the assertion and stated that he had not been offered the overtime during the conference calls during the week of April 8, 2019. According to the statement, he would have worked the overtime had it been offered.

In its July 1, 2019 correspondence, the Organization raises two points. The first point is that the offer of overtime to the crew did not occur:

The Carrier contends that Track Supervisor Fred Hoppe offered this work to anyone who wanted it during multiple calls the week prior. It is the position of the Organization that this did not occur. If Mr. Hoppe had in fact

offered the Claimant the work, he would have gladly accepted, as he regularly works this overtime on his rest days.

In addition, the Organization has attached a statement (Attachment A) from the Claimant confirming that he was not offered the overtime in question at any time during the week prior to April 13 and 14, 2019.

Second, if the call occurred, it was an improper offer of overtime:

Furthermore, even if Mr. Hoppe had offered everyone this work collectively, the agreement is clear that it is to be offered to the senior, qualified, employee at the headquarter location that ordinarily and customarily performs the work in question. A blanket offer of overtime would not meet this requirement.

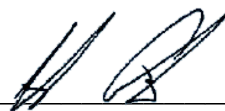
The first question is dispositive and the second question need not be reached. The burden is on the Organization to establish a violation of the Agreement by showing the improper assignment of the work to outside forces. There is no dispute that the work was performed by outside forces during what would have been overtime for Claimant. The Organization has provided Claimant's statement in support of the assertion that overtime was not offered during the conference call. The Carrier's correspondence asserts that the overtime was offered, but includes no statements from the person who allegedly offered the overtime. Had that occurred, there would have been conflicting accounts of the alleged violation.

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. The Carrier does not adequately refute the Organization's claim that the overtime was not offered during the conference calls. The question of whether the offer to all employees on the conference is an adequate offer is therefore not addressed.

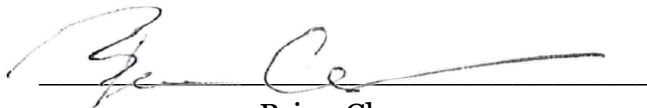
Claim sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Patrick Crain
Carrier Member



Adam Gilmour
Organization Member



Brian Clauss
Neutral Member

Dated: December 20, 2023