

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 266

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00025

Claimant: M. Barnes et al.

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. M. Barnes, D. Johnson, J. Von Rueden, J. Pineo, K. Gunderson and E. Kivisto by assigning non-agreement employees to perform the duties of repairing, dumping ballast, inspecting and cleaning up a collapse of the railroad grade embankment, on the Superior Subdivision at the approximately Mile Post 468.1, which is commonly identified as the Steelton Hill, beginning at 1500 hours on October 15, 2018 and continuing through 0200 hours on October 17, 2018 (Carrier's File WC-BMWED-2018-00025 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimants M. Barnes, D. Johnson, J. Von Rueden, J. Pineo, K. Gunderson and E. Kivisto shall now be allowed pay at the applicable time and one-half and double-time rates of pay at the applicable rates of pay of each of their respective positions for a total of thirty-five (35) hours, worked by the non-agreement employees performing the work in question.”

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 the Carrier violated the Agreement on October 15, 2018 through October 17, 2018, when outside forces and managers performed the Maintenance of Way work of repairing, dumping ballast, inspecting, and cleaning up a collapse of the railroad grade embankment, on the Superior Subdivision at Steelton Hill at Mile Post 468.1. BMW-represented forces customarily perform this work. Stack Brothers and Carrier management performed the work.

The Organization continues that although Rule 13K allows the Carrier to subcontract work, the significant limitations to the Rule require certain conditions precedent before work can be subcontracted. Those limitations are in Rule 13L and Rule 13N which provide:

L. 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.

N. 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.

The Organization notes no suspension of operations due to labor dispute or emergency that temporarily reduced existing Maintenance of Way workforce. The Claimants possessed the necessary skills and were available.

The Carrier maintains that the Organization has not provided any evidence of a Rule 223A Overtime violation. The Organization cannot establish the Claimants were the senior active employees in the required job class in the assigned gang that ordinarily and customarily perform the work.

The Carrier continues that BMW employees were utilized to do all work that did not require specialized equipment. Contractors were used because special equipment was required and the Carrier did not have available equipment. BMW employees performed all work that did not require specialized equipment. WC BMW employees provided track


authority, track inspection, and dumped ballast. The contractors used trackhoes and dozers, to place the ballast. Tracked equipment was required and unavailable, so the contractors were used. The Carrier disputes the Organization assertion that tracked equipment is not specialty equipment.

The Organization must provide substantial evidence supporting the elements of the claim. Here, the Organization has established that work was done by subcontractors. The Organization has also shown that the work was customarily performed by BMW employees and that this would have been overtime work for the Claimants. The Carrier admits Subcontractors performed ballast work.

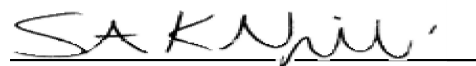
The Carrier defends asserting an exception to the rule. To establish the defense, the inquiry is whether any Agreement exceptions applied that would permit subcontractors to perform the work. The Carrier cites specialty equipment that required outside subcontractors to work the embankment collapse. Although citing the need for specialty equipment, there is nothing in the record to support that assertion. The Organization correctly notes that the record is devoid of supporting statements or documentation from the Carrier's Engineering Department to support the need for specialized equipment.

The Organization has established the elements of the claim. The Carrier has not established the elements of the defense.

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



Adam Gilmour
Organization Member



Steven Napierkowski
Carrier Member



Brian Clauss
Neutral Member

Dated: December 18, 2024