

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 268

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00033

Claimant: J. Hagen

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned a non-agreement employee, who is employed by Wren Works, to perform the duties of moving materials at the Hawthorne House Track, instead of assigning Mr. J. Hagen thereto on May 4, 2019 (Carrier's File WC-BMWED-2019-00033 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Hagen shall now be allowed pay at the Machine Operator A rate of pay, for all hours worked by the Wren Works employee on May 4, 2019 at the House Track Hawthorne, at the applicable time and one-half 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 contends Claimant was a regularly-assigned Machine Operator A- Boom Truck, qualified, able to perform the work, and available to perform the work during off hours. The evidence shows Carrier used an employee from Wren Works, a subcontractor, on May 4, 2019. This work would have been an overtime opportunity for BMW-represented employees. This use of a subcontractor violated the Agreement.

The Carrier maintains that another employee is the incumbent to this work. Rule 13, Paragraph N does not compel the Carrier to call Claimant or any other employee from another location. There is no evidence establishing that Claimant should have been offered an overtime opportunity.

The Organization notes that Claimant is headquartered in Superior, Wisconsin. The disputed work was on the Hawthorne House Track. Although Carrier claims Mobile Boom Truck Operator D. Webster normally performs this work, there is nothing in the record to support that defense. Claimant J. Hagen submitted a statement that he normally performs this work. Further, Mobile Boom Truck Operator D. Webster starts out of Ladysmith, Wisconsin, a distance of one hundred fifteen miles from the disputed work. Claimant works out of Superior, Wisconsin, a distance of twenty-six miles from the disputed work. Even if the Carrier could show Mr. Webster was entitled to the work, Carrier still violated the Agreement by not offering the overtime and instead using a contractor.

Rule 13N 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.

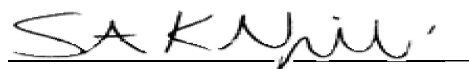
The Organization must provide substantial evidence supporting the elements of the claim. Here, the Organization has established that subcontractors did work. The Organization has also shown that the work was customarily performed by BMW employees and that this would have been overtime work for the BMW-represented employees. The Carrier asserts that Claimant worked under a different track supervisor than the track supervisor for this territory, therefore he was not offered the overtime.

There is nothing in the Agreement to support the Carrier defense. The location of the track supervisor does not dictate which employee receives the overtime. Claimant established that he regularly and customarily performs the Boom Truck work. Claimant should have been offered the overtime.

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