

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 269

---

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00028

Claimant: C. Weisz

---

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned non-agreement employees, who are employed by Lakehead Constructors, to perform the duties of snow removal, changing rail and various other general section duties on the Rainy Subdivision and in the Ranier Yard, instead of assigning Mr. C. Weisz thereto beginning on February 14, 2019 and continuing (Carrier's File WC-BMWED-2019-00028 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Weisz shall now be allowed pay at the applicable rate of pay at the trackman nights rate of pay, for all hours worked by the Lakehead Constructors nonagreement employees, 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 maintains the Carrier violated the Agreement on February 14, 2019, and continuing by using Lakehead Construction to perform snow removal. BMW-represented forces customarily perform this work. This overtime opportunity should have been given to the BMW-represented Claimants.

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. The limitations of Rule 13N provide:

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 Carrier maintains that safety concerns were the reason for limiting the overtime opportunity for the Claimants.

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 Claimants. The Carrier admits Subcontractors performed the snow removal work.

The Carrier defends asserting an exception to the rule based upon safety concerns. To establish the defense, the Carrier must establish the safety concerns as an exception to the overtime rule. The Carrier makes a blanket assertion about safety concerns and employees being rested. However, the Carrier can cite no Agreement provision to support the defense. The Organization notes that unexpected occurrences regularly require long hours. This situation is no different than other situations.

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

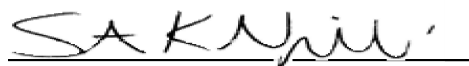
Claim sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



---

Adam Gilmour

Organization Member



---

Steven Napierkowski

Carrier Member



---

Brian Clauss

Neutral Member

Dated: December 18, 2024