

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 272

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00022

Claimant: J. Borich

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rule 22 of the Agreement when it failed to offer and assign Mr. J. Borich to perform the duties of operating the AF1 Blower Truck at Missabe Junction beginning on February 19, 2019 at 2000 hours and continuing through February 20, 2019 at 0600 hours, for a total of ten (10) hours and instead assigned junior employee T. Kauther thereto (Carrier's File WC-BMWED-2019-00022 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Borich shall now be compensated for ten (10) hours at the applicable time and one-half rate of pay, at the applicable Machine Operator A-AF1 Blower Truck 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 the Agreement was violated on February 19 and 20, 2019 when the Carrier failed to assign Claimant the overtime assignment on the AF1 Blower Truck in the Proctor Yard on the Missabe Subdivision. The Organization claims that an employee with less seniority was assigned to the AF1 blower truck.

The Carrier maintains 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. Claimant would have worked too many hours and would have posed a danger to himself or others while commuting or in the workplace.

Agreement Rule 22D provides, in relevant part:

OVERTIME Section 1. Compensation

- D. Work in excess of forty (40) straight time hours in any workweek shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another.

* * *

Section 3. Preference for overtime work.

- A. When work is to be performed outside the normal tour of duty and not in continuation of the day's work, the senior active employee in the required job class in the assigned gang will be given preference for overtime work ordinarily and customarily performed by them.

Section 3 of Rule 22 is clear. The Rule provides that the senior employee in the job classification, in the assigned gang, receives preference for overtime work. Claimant is senior to the employee who received the overtime work. Claimant is in the required job class and in the same gang.

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 Carrer 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.

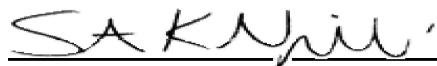
Claimant should have been offered the overtime.

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