

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 273

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00027

Claimant: Z. Pearson

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. Z. Pearson by assigning non-agreement employees, employed by Lakehead Constructors, to perform the duties of snow removal, changing rail and other various general section duties on the Rainy Subdivision and in the Ranier yard near Ranier, Minnesota on March 1, 2019 and continuing (Carrier's File WC-BMWED-2019-00027 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant Z. Pearson shall now be compensated at the headquartered foreman nights' rate of pay for all hours worked by the non-agreement employees at the time and one-half and double time 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 March 1, 2019 when contractors were used for snow removal, changing rail, and other BMW-represented

employee duties on the Ranier Yard. Lakehead Constructors performed the work that was normally performed by BMW-employees.

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. According to the Carrier, one group worked days and one worked nights. The BMW-employees were relieved by the subcontractors. Had Claimant worked the cited overtime, he would have worked 24 hours without a break. He 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 in the required job class and in the same gang.

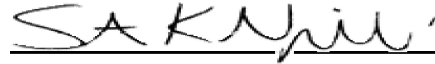
The Carrier defends asserting an exception to the rule based upon safety concerns. To establish the defense, the Carrier must establish the safety concerns as an exception to the overtime rule. The Carrier makes a blanket assertion about safety concerns and employees being rested. However, the Carrer 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