

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 281

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00009

Claimant: A. Eskola

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to assign Mr. A. Eskola to perform the duties of deicing switches and snow removal on the Superior and Missabe Subdivisions on February 24, 2018, beginning at 1900 hours continuing for thirteen (13) hours until 0800 hours on February 25, 2018 and instead assigned employee C. Keppers thereto (Carrier's File WCBMWED-2018-00009 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Eskola shall now be compensated for thirteen (13) hours at the applicable time and one-half rate of pay, at the applicable trackman rate of pay for the lost work opportunity on February 24, 2018.”

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 Claimant was assigned and working as a Trackman on the Superior Nights Crew headquartered at Superior, Wisconsin. On February 24, 2018, beginning at 1900 hours continuing for thirteen (13) hours until 0800 hours on February 25, 2018, the Carrier failed to assign the Claimant to perform the duties of deicing

switches and snow removal on the Superior and Missabe Subdivisions and instead assigned a junior employee. There is no dispute that the Claimant was the senior active employee in the required job class. Claimant should have been offered the overtime assignment.

The Carrier defended that the Blower Truck required a CDL, which Claimant does not possess. The Carrier later admitted that the Blower Truck was not used for the overtime assignment. The Carrier also defended that the assignment required driving a company vehicle for which a CDL was required. The junior employee's statement indicates that he did not drive because driving duties were handled by another employee.

RULE 22 – Overtime, provides in Section 1:

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 details overtime preference:

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.

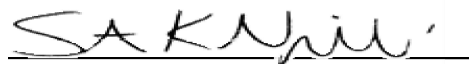
The Organization must provide substantial evidence supporting the elements of the claim. Here, the Organization has established that there was overtime and that Claimant was senior to the employee who received the overtime. Claimant usually and customarily performed this work. Claimant should have been offered this overtime. Although the Carrier defends that a CDL was required, there is nothing in the record to support that conclusion. To the contrary, the statements in the record indicate that a CDL was not required because the Blower Truck was not used. Further, Claimant was not required to drive because another employee was driving the Company vehicle during the overtime assignment.

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

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Adam Gilmour

Organization Member

A handwritten signature in dark ink, appearing to read 'S. Napierkowski', is written over a horizontal line.

Steven Napierkowski

Carrier Member

A handwritten signature in dark ink, appearing to read 'Brian Clauss', is written over a horizontal line.

Brian Clauss

Neutral Member

Dated: December 18, 2024