

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 282

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00010

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 March 10, 2018, beginning at 2200 hours continuing for ten (10) hours until 0800 hours on March 11, 2018 and instead assigned employee C. Keppers thereto (Carrier's File WC-BMWED-2018-00010 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Eskola shall now be compensated for ten (10) hours at the applicable time and one-half rate of pay, at the applicable trackman rate of pay for the lost work opportunity on March 10 and 11, 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 the Carrier violated the Agreement on March 10, 2018 through March 11, 2018. The Organization asserts that Claimant should have been assigned to deice switches and remove snow on the Superior and Missabe Subdivisions. A junior employee was assigned instead of Claimant. 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. The Organization also asserts that there was no need for a CDL to operate the equipment.

An examination of the statements shows that the junior employee who received the work noted that the AF1 was not used on February 24 or March 12, 2018. The Employee also noted that Mr. Johnson drove the Highrail on February 24, 2018. He did not mention the date of this claim. The Organization has not established the elements of the Claim.

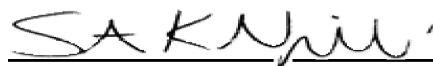
Claim denied.



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Adam Gilmour

Organization Member



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Steven Napierkowski

Carrier Member



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Brian Clauss

Neutral Member

Dated: December 18, 2024