

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 283

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2018-00021

Claimant: S. Bringsosen

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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. S. Bringsosen to perform the duties of flagging a crossing on the Waukesha Subdivision at Belvidere Road on August 12 through 14, 2018 and instead assigned employee A. Schumacher thereto (Carrier's File WC-BMWED-2018-00021 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Bringsosen shall now be compensated for thirty-six (36) hours at the applicable time and one-half rate of pay, at the applicable trackman rate of pay for the lost work opportunity on August 12 through 14, 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 contends that Claimant was a Trackman assigned to Burlington, Wisconsin. The Organization continues that the Carrier assigned an employee headquartered at another location for overtime flagging work from August 12, 2018 through August 14, 2018. Claimant is in the proper job class, is assigned to the gang in

whose territory the work was done, and normally and customarily performs the work on this territory. Claimant should have been offered the overtime assignment.

The Carrier maintains that the Agreement was not violated because Claimant was working as a trackman and not a foreman. A foreman was required to do the work, therefore the other employee was offered the work. The work of removing a slow order is not work ordinarily and customarily performed by a trackman, which was the claimant's capacity in his gang. Claimant was not a valid incumbent to the overtime over an employee that was a foreman who ordinarily and customarily performs the work of removing slow orders.

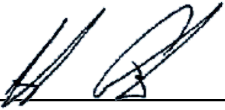
Rule 22, entitled Overtime, provides in relevant part:

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.

The Organization must provide substantial evidence supporting the elements of the claim. Here, the Organization has established that the work was performed, that Claimant was assigned to the territory, and that Claimant did not get the work in favor of another employee. What the record shows is that the employee offered the overtime was a Mobile Foreman and not assigned to the territory.

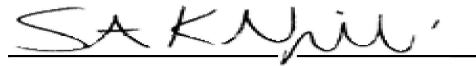
The applicable rule provides that the work must be "ordinarily and customarily performed by them" for a claim to prevail. The Organization has also shown that the work was customarily performed by BMW employees and that the person who performed the overtime was not assigned to the gang to whom the work should have been offered.

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



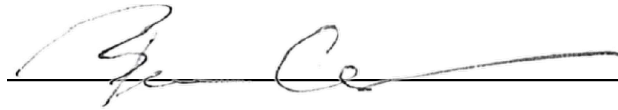
Adam Gilmour

Organization Member



Steven Napierkowski

Carrier Member



Brian Clauss

Neutral Member

Dated: December 18, 2024