

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF)	
MAINTENANCE)	
OF WAY EMPLOYES DIVISION)	
IBT RAIL CONFERENCE)	Case No. 43
)	Award No. 43
and)	
)	
WISCONSIN CENTRAL LTD.)	
.)	Claimant M. Ettenhofer

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to bulletin a mechanic/loader vacancy at the Escanaba Ore Dock beginning August 20, 2012 and continuing and instead assigned Remote Control Operator J. Anderson instead of Claimant M. Ettenhofer to perform mechanic/loader work during the claim period (Carrier's File WC-BMWED-2012-00027 WCR).
2. The claim referenced in Part 1 above, as presented under date of October 5, 2012 (Employees' Exhibit "A-1") to Senior Director Michael Suter, shall be allowed as presented because it was not disallowed by Senior Director Suter in accordance with Rule 30.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimant M. Ettenhofer shall be compensated the differential in pay between the trackman rate of pay and the mechanic/loader rate of pay for all hours worked by Mr. J. Anderson during the claim period. In addition, Claimant M. Ettenhofer must be compensated for eighty (80) miles at the current IRS rate for the distance he was required to travel to Little Lake, Michigan every workday during the claim period as a result of the Carrier's violation of the Agreement."

Findings:

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.

Parties to said dispute were given due notice of hearing thereon.

The Organization initially claims a violation of Rule 30 of the Agreement when the appropriate Carrier official failed to respond to the Claim. Although an Ore Dock Manager responded in both a dated and an undated letter, he was not the proper official. Accordingly, the claim must be granted pursuant to the terms of the Agreement.

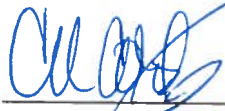
On the merits, the Organization contends that the Carrier selected a junior remote operator to do Mechanic/Loader work at the Escanaba Ore Dock. There was not train traffic coming into the Ore Docks for the foreseeable future and the Carrier could not possibly have needed two remote control operators at the site. Claimant's position was abolished and he was forced to displace to another location at reduced pay.

The Carrier counters that it had the right to determine staffing. Positions were abolished and the remaining positions were properly bulletined and assigned. There can be no violation when the Carrier has followed the Agreement.

Positions at the Escanaba Ore Dock were abolished as the rail traffic diminished to the point of ceasing. Two remote operators remained, three mechanic loaders and a lead mechanic remained as positions. Claimant was not qualified as a remote control operator, but would have been able to remain on site had the position been properly bulletined as a mechanic loader and not a remote control operator. The Organization points to Carrier announcements on the property that there would be no traffic. The position was a mechanic loader position and the work being done was mechanic loader work, not remote control work.

A review of the evidence by this Board indicates that the Organization has met the burden of proof. The Claim is sustained.

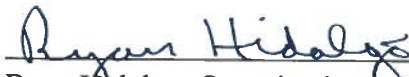
Claim sustained.



Cathy Cortez, Carrier Member



Brian Clauss, Chairman



Ryan Hidalgo, Organization Member

Signed on March 27, 2017