

PUBLIC LAW BOARD NO. 7566

**BROTHERHOOD OF
MAINTENANCE
OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE**

and

WISCONSIN CENTRAL LTD.)

Case No. 45
Award No.45

Claimants: R. Krueger, et al

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned outside forces (Railworks) to perform Maintenance of Way work (i.e., track surfacing) beginning on November 5, 2012 and continuing, instead of the Claimants (Carrier's File WC-BMWED-2012-00031 WCR).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimants R. Krueger, T. Maug, D. Webster and T. Kalz shall be allowed pay at their applicable straight and overtime rates of pay for all straight time and overtime hours worked by the outside forces beginning on November 5, 2012 and continuing."

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.

Claimants were assigned to the Lake Zone Surfacing Gang from November 5 through December 10, 2012. During that period, subcontractors were performing surfacing work on the Barron Subdivision.

The Organization claims a violation of Rule 1, Scope which provides:

These rules shall be the agreement between the Canadian National Railway

Company (former Wisconsin Central Ltd.) and its employees of the classifications herein set forth representation by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of bridges, culverts, buildings and other structures, tracks, fences and roadbed, and shall govern the rates of pay, rules and working conditions of such employees. This paragraph shall neither expand nor contract the respective rights of the parties, nor infringe upon the contractual rights of other railroad crafts in effect on the date of this agreement.

In addition, Rule 13 N provides:

The Company will not use the provisions of this rule to use outside contractors in a way that would supplant the use of the existing workforce during off hours and on rest days in an effort to deny the existing workforce overtime opportunities. This commitment does not require the company to call individuals from another location to perform work in lieu of using an outside contractor.

The Organization claims that the Carrier sent the Lake Zone Surfacing Gang to tie up and abolished the Gang while subcontractors performed surfacing work. The Carrier responds that there was no violation of the Agreement because the Surfacing Gang was not working on the Barron Subdivision and further, that the Surfacing Gang was being paid during the period at issue.

The Organization argues that the Carrier is using the provisions of the Agreement, to supplant the Claimants. However, the Carrier defended the Claim during the on-property handling, in pertinent part:

"Per rule 13 paragraph 'N' the last sentence states ' This commitment(sic) does not require the Company to call individuals from another location to perform work in lieu(sic) of using an outside contractor'.

Said claimants(sic) were not working at or on the Barron Sub. They working for and on Track Supervisor Keith Admundson's Territory which does not include the Barron Sub.

The Barron Sub is on Track Supervisor Joshua Glause's Territory. Therefore the claimants(sic) would have had to been called from another location. Rule 13 paragraph N, clearly states that the Company is not required(sic) to call individuals(sic) from another location. Therefore the claim is without merit(sic) and declined."

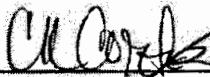
The burden is on the Organization to establish a violation of the Agreement by assigning the work to subcontractors. The Organization claims that the Scope rule and Rule 13 require that the instant work should have been assigned to Claimants. However, an examination of the record and submissions does not support this interpretation.

Rule 13 N does not require that Carrier call employees from another location. That is what the Organization argues should have happened in the instant matter. Although the Organization claims that the Carrier moved the Claimants' Surfacing Gang in order to avoid assigning them the work, there is no support in the record for this claim. Accordingly, the claim is denied.

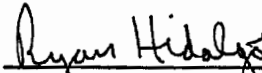
Claim denied.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on December 31, 2016