

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE OF)	Case No. 50
WAY EMPLOYEES -- IBT RAIL CONFERENCE)	Award No. 50
)	
and)	
)	
CANADIAN NATIONAL/WISCONSIN)	
CENTRAL LTD.)	
)	Claimant: A. Mallek

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

1. The Carrier violated Rule 1 and Rule 13 of the Agreement when it supplanted its existing workforce in an effort to deny an overtime work opportunity for Mr. A. Mallek by assigning non-Agreement employees to perform snow plowing work at the Wausau Yard on January 18, 25, 28 and 30, 2013 and on February 7, 11, 14, 19 and 22, 2013 (Carrier’s File WC-BMWED-2013-00006 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Mallek shall be compensated for an equal and proportionate share of all overtime hours worked by the non-Agreement employees during the claim period for his loss of work opportunities.”

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.

Claimant was assigned to the Wausau Yard. On certain dates, the Carrier used an outside contractor, the Krenz Company, to perform snow removal in the yard.

The Organization claims the Carrier was using a subcontractor to perform snow removal work despite the fact that Organization employees customarily and historically perform such Maintenance of Way work.. Further, Claimant is a loader operator and plows snow on a regular basis, as do many other loader operators in Wisconsin during the winter months. The Organization also argues that the Carrier’s defense that Claimant was working full time is incorrect because the Claimant was available for overtime and on his rest days.

The Carrier counters that it has the unilateral right to subcontract work as long as the applicable Rules are not violated. The Carrier continues that there is no violation of the Rules because the Claimant is not the only employee who ordinarily and customarily performs the work. The Carrier continues that the work performed by the contractor is “by contract and handled by

another department. On the dates in question, these days were not the rest days of the claimant nor has the organization proved that the hours worked were during the off hours of the claimant.”

The Organization claims a violation of various Rules including 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.

In support of the instant claim, the Organization included the statement of Claimant Mallek:

I regularly plow snow in the CN Wausau, Wisconsin Train Yard with the CN Front End Loader which I'm assigned to. I have spoken to an employee of Contractor Krenz and they reported to me the hours contractor Krenz plowed mostly during my off assigned hours in my claims.

Andrew R. Mallek, 4-10-2013

The burden is on the Organization to establish a violation of the Agreement by the Carrier by showing the improper assignment of snow removal work to subcontractors. The Organization claims that Claimant was available to do the snow plowing that he regularly does in the Wausau Yard. The Carrier responds that the contract was with another Department, that Claimant was not the only one to do the work, and that Claimant was working when the subject work was performed.

An examination of the record and submissions support the Organization's arguments. The Carrier does not dispute that the work was performed by a contractor, however, the Carrier does not adequately refute the Organization's claim. The Claimant's statement was that the work was performed "mostly during my off assigned hours in my claims." The Carrier offers a blanket denial without any support that Claimant was working. The Carrier also states that the work was contracted through another Department and was not normally done by Claimant. However, the Carrier offers nothing in support of its assertion and the Organization's claim is therefore, unrefuted.

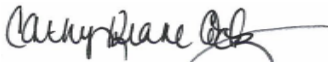
Claimant's contention that front end loader operators normally performed the same type of work that the subcontractors were performing is unrefuted. Claimant's statement that he was available is also unrefuted. Moreover, despite the Organization's unanswered requests for Krenz invoices, the Carrier has not refuted that the snow plowing occurred during the Claimant's off hours. Accordingly, the claim is sustained.

Award:

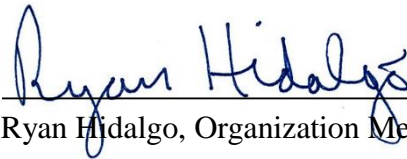
Claim sustained.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on July 24, 2018