

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION)
IBT RAIL CONFERENCE)
and)
WISCONSIN CENTRAL LTD.)

Case No. 62
Award No. 62

Claimant J. Dixon, et al.

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

1. The Carrier violated Rules 1 and 13 of the Agreement when it supplanted its existing workforce in an effort to deny an overtime work opportunity for Claimants by assigning non-Agreement employees to perform surfacing work on the Barron Subdivision beginning July 23, 2013 and continuing (Carrier's File WC-BMWED-2013-00026 WCR).
2. As a consequence of the violation referred to in Part 1 above, the Organization requests Claimants J. Dixon, J. Kirkham, B. Ogle and T. Kalz be compensated an equal and proportionate share of all overtime hours worked by the non-Agreement employees during the claim period for their 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.

Claimants were assigned to the Ladysmith Surfacing Gang. During the period at issue, 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 was using a subcontractor to perform surfacing work on the Barron Subdivision. During the handling on the property, the Carrier stated that it would have been cost prohibitive to have the Ladysmith Surfacing Crew travel from the area that they were working to the Barron subdivision. The Organization points out that there would be virtually no travel involved. In support, the Organization pointed out that the switch for the Barron Subdivision is located in the Ladysmith Yard where the Surfacing Gang tied up. The Organization also argues that, the Carrier's defense that the subcontractors were working a 7 on 7 off schedule and the Claimants a 10 day schedule, is irrelevant because there were a number of days that the Claimants could have worked the overtime. The Organization also argues that the Carrier's defense that the employees were working full time is incorrect because the employees were available for overtime and on their 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 Claimants were working full time. The Claimants' Surfacing Gang schedule only left two available days every fourteen days and to have the Ladysmith Surfacing Gang perform this work for two days every fourteen would have adversely affected the project deliverables.

The burden is on the Organization to establish a violation of the Agreement by assigning the work to subcontractors. The Organization claims that Claimants were available to do this work, that surfacing work is work that this surfacing gang does, and that they were in the area in which the work was being performed.

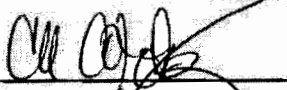
An examination of the record and submissions supports the Organization's arguments. The Claimants' surfacing gang performed the same type of work that the subcontractors were performing. Further, the Claimants were available for overtime and on rest days. Moreover, for most of the time that the Claimants' surfacing gang was performing their work, they were tying up at the Ladysmith Yard – the yard that contains the switch for the Barron Subdivision.

This is not a situation where the Carrier's own forces were a considerable distance away. In this matter, the Claimants would have to travel from the same tie up yard through a different switch to the worksite. The evidence in the instant matter shows that the Claimants do the surfacing work that the contractors were performing, the Claimants were available on rest days to do the work, and that Claimants would not have to travel from another location to perform the work. Accordingly, the claim is sustained.

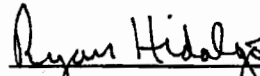
Claim sustained.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on December 31, 2016