

PUBLIC LAW BOARD NO. 7599

AWARD NO. 108
CASE NO. 108

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to offer and assign Ms. L. Kreps to perform overtime track inspection work on the K-200 SPUR on June 22 and 23, 2015 and instead assigned junior Welder Helper C. Heisler thereto (Carrier’s File GTW-BMWED-2015-00017 GTW).
2. As a consequence of the violations referred to in Part 1 above, Claimant L. Kreps shall be compensated for nine and a half (9.5) hours at the applicable foreman time and one-half rate of pay for June 22, 2015 and June 23, 2015.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The record in this case has an unusual feature. As the Statement of Claim explains, the claim contends that the Carrier did not properly assign overtime track inspection work to the proper person. The Carrier asserts that there was a verbal agreement between the Track Supervisor who made the assignment and the Organization’s Assistant General Chairman (AGC) that approved the assignment.

All of the Organization’s correspondence that constituted its portion of the on-property record was authored by the AGC. Therefore, the AGC’s contribution to the record fulfilled a dual role. Not only did the Organization’s correspondence make assertions about the alleged verbal agreement, but it also constituted evidentiary statements by the AGC as proof of his version of the alleged agreement. Specifically, the AGC did not discuss the call out until after the

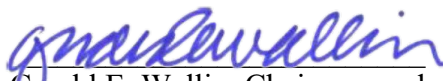
assignment had been made by the Track Supervisor. In addition, the AGC maintained that the information provided to him by the Track Supervisor did not prove to be accurate. Therefore, the AGC advanced the claim that the assignment was an improper call out.

The record does not contain any competing statement by the Track Supervisor to refute the statements of the AGC. All of the Carrier's correspondence was authored by persons who were not a party to the alleged agreement.

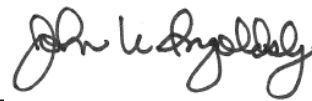
Given the state of the record before us, we must find that the Organization has proven its claim. Therefore, the claim is sustained as presented.

AWARD:

The Claim is sustained in accordance with the Findings. The Carrier is directed to comply with this Award within thirty (30) days of the date shown below.


Gerald E. Wallin, Chairman and
Neutral Member


John Schlismann,
Organization Member


John Ingoldsby,
Carrier Member

Date: July 9, 2021