

PUBLIC LAW BOARD NO. 7599

AWARD NO. 68
CASE NO. 68

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 is denied.

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 Mr. E. Ostrander to perform overtime work associated with his bid in boom truck on February 10, 2016 and instead assigned log Truck Driver S. Stevens thereto (Carrier’s File GTW-BMWED-2016-00009 GTW).
2. As a consequence of the violations referred to in Part 1 above, Claimant E. Ostrander shall be compensated for six and one-half (6.5) hours’ at the applicable Boom Truck Operator’s time and one-half rate of pay for February 10, 2016.”

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 claim alleges violations of Rule 1, Rule 3, and Rule 11 of the parties’ 2008 labor Agreement. However, only the text of Rule 11 was made part of the on-property record. Section 3(a) of the Rule reads as follows:

- (a) When work is to be performed outside the normal tour of duty and not in continuation of the day’s work, the senior active employee in the required job class in the assigned yard and/or road maintenance gang will be given preference for overtime work ordinarily and customarily performed by them.

It is undisputed that the overtime work in question was outside of the normal tour of duty and was not in continuation of the day’s work. As written, Rule 11 next gives preference for the

overtime work to "... the senior active employee in the required job class in the assigned yard and/or road maintenance gang ..." The Carrier asserted that the employee who was called for the work has worked in the Pontiac yard since 2014 pursuant to an award on Bulletin No. 376 on September 30, 2014.

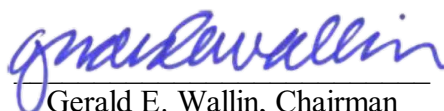
The Carrier also asserted, without opposition, that the employee called to perform the work had greater Trackman and Machine Operator seniority than claimant.

Although the Organization provided a statement that expressed the opinion that claimant should have been called for the work, the record does not establish that the employee had the requisite authority to make interpretations of Rule 11.


In claims of this kind, it is well settled that the Organization and claimant must satisfy the burden of proof to establish all of the elements of a claim. On the record before us, that burden has not been satisfied. Accordingly, we must deny the claim.

AWARD:

The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member


John Schlismann,
Organization Member
John Ingoldsby,
Carrier Member

Date: July 9, 2021