

**BEFORE PUBLIC LAW BOARD NO. 6915**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE  
and  
CN – WISCONSIN CENTRAL RAILROAD**

**Case No. 54**

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

1. The Carrier violated Rule 13 of the Agreement when it supplanted its existing workforce on a rest day in an effort to deny an overtime work opportunity for the Claimant, by assigning a non-agreement employee to perform overtime flagging work in connection with the performance of Maintenance of Way work on the Superior Subdivision from Mile Post 407.4 to Mile Post 411.75 between 9:15 A.M. and 2:30 P.M. on September 17, 2009 (Carrier’s File WC-BMWED-2009-00067).
2. As a consequence of the violation referred to in Part 1 above, Headquartered Foreman Mike Bratina shall be compensated for five and one-quarter (5.25) hours at the applicable headquartered foreman time and one-half rate of pay for this lost work opportunity.”

**FINDINGS:**

The Organization filed a claim on the Claimant’s behalf, alleging that the Carrier violated the parties’ Agreement when it assigned an outside contractor employee to perform overtime flagging work in connection with the performance of Maintenance of Way work, instead of assigning this flagging work to the Claimant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the work in question is contractually reserved to Carrier forces, because there was no exception under Rule 13 L that existed on the claim date that would permit the Carrier to assign the work in question to an outside contractor employee, because the

Carrier's use of an outside contractor employee to perform the work in question denied the Claimant an overtime work opportunity, because there is no merit to the Carrier's defenses, and because the Claimant is entitled to the requested remedy. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of proof, because the Organization is attempting to obtain through arbitration what it failed to obtain through bargaining, because the work in question is not mentioned in the contractual rule defining the scope of work, and because no remedy is due.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement by allowing a subcontractor to perform flagging work on September 17, 2009. Therefore, the claim must be denied.

First of all, the Scope Rule contains no specific reference or language regarding flagging or providing protection for contractor forces. Hence, that work is not preserved exclusively for the Organization-represented employees. There is no requirement that the Carrier only use its own employees represented by the Organization to perform that type of work.

Moreover, Rule 13, Paragraph K, allows the Carrier the unilateral right to contract out work within the scope of the Agreement. Although the Organization has performed the track protection work in the past, there is nothing in any of the Agreements that are in

evidence that gives the work exclusively to these Organization-represented employees.

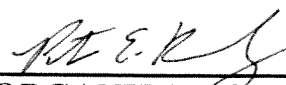
Since the Organization bears the burden of proof in cases of this kind and has failed to meet that burden, this Board has no choice other than to deny the claim.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**  
**DATED:** 10/31/12

  
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**ORGANIZATION MEMBER**  
**DATED:** October 31, 2012