

PUBLIC LAW BOARD NO. 5564

Brotherhood of Maintenance of Way)	
Employees)	AWARD NO. 39
)	CASE NO. 39
and)	
)	
Northeast Illinois Regional Commuter)	
Railroad Corporation)	

STATEMENT OF CLAIM:

“Claim on behalf of Ivory Scott (B&B Mechanic, pin-6398) or the most qualified Claimant, because the Carrier violated the current working agreement Rule(s) including but not limited to Rule(s) 18(k) and Appendix O, Section(s) 6 when the Carrier allowed an ineligible out of sequence employee to work overtime on the Metra-Electric District.”

OPINION OF BOARD:

Public Law Board No. 5564, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimant in this case is a Bridge and Building (hereinafter “B&B”) employee who was, when events giving rise to this dispute occurred, assigned to B&B Maintenance Gang 232 headquartered at the Carrier’s Kensington Yard in Chicago, Illinois. The record establishes that on July 24 and 25, 2010, the Carrier assigned Water Service employees represented by the Sheet Metal Workers International Union to pump flood waters at the 31st Street Station. On both dates, the Carrier also called a B&B employee in on overtime to assist the Water Service Sheet Metal Workers, and it is that particular assignment which prompted the instant claim.

The record establishes that the overtime work at issue (that of assisting SMW Water Service employees on both dates of claim) was actually performed by a member of B&B Gang 240 headquartered at Randolph Street. It is also true that the 31st Street Station, where the disputed work was performed, is located within the assigned territory of B&B Gang 232 (of which Claimant was a member), and not the assigned territory of B&B Gang 240. Citing Rule 18(k) and Appendix O, Section 6 in support, the Organization subsequently submitted this claim, arguing that

Claimant (or another member of Gang 232) should have been called in on overtime to perform that work. In denying the claim, the Carrier argued that neither Rule 18(k) nor Section 6 of Appendix O preserves the specific work in question to any identified gang within the B&B subdepartment, or, for that matter, to the bargaining unit as a whole. It was further argued by the Carrier that the work of assisting Sheet Metal Worker Water Service employees has never been performed exclusively by B&B employees in the past, and thus, neither the spirit nor the letter of the Collective Bargaining Agreement was violated. In relevant part, Appendix O, Section 6 states:

Metra Electric – B&B: This district is broken down into three areas: 95th Street north to Randolph Street, including the South Chicago Branch... Gang 240 is headquartered at Randolph Street. These gangs handle all B&B work on the district, including planned and emergency overtime. Any such overtime, either planned or emergency, is offered to the gang normally assigned to that area. Seniority within individual gangs is always honored. (Emphasis added.)

- *Any overtime help for Gang 231 would first go to Gang 241 and then in order to Gangs 230, 232, and 240.*
- *Any overtime help for Gang 230 would first go to Gang 241 and then in order to Gangs 231, 232, and 240.*
- *Any overtime help for Gang 232 would first go to Gang 240 and then in order to Gangs 230, 241, and 231.*

Clearly, Appendix O provisions cited by the Organization in support of this claim fail to specifically mention Water Service assistance work, and cited Rule 18(k) only controls the preferential assignment of overtime continuous with regular work periods. Thus, in order for the Organization to prevail in the instant matter, there must be evidence in the record that; 1) the disputed overtime was performed in connection with normally recognized “B&B work” (and thus it specifically and exclusively belonged to Claimant or another member of Gang 232 because of its geographical location); 2) the work of assisting Water Service employees is expressly reserved for B&B forces by agreement or consistent practice; and/or 3) Carrier employees belonging to other work groups have never performed the disputed work. On each of the three points, we conclude that the Organization failed to meet its burden of proof.

In the end, the Organization failed to demonstrate to the satisfaction of this Board, as was its burden to do, that the disputed overtime was earned by another B&B employee in connection with recognized “B&B work” within the intent and meaning of the parties’ agreement. While Appendix O does establish gang “territories” within the Metra-Electric District for purposes of assigning work and overtime, it does nothing to alter (or expand) the scope of recognized subdepartment

work. The Board understands the Organization's premise here that because a B&B employee (and not an employee belonging to another subdepartment or craft) was, in fact, called to work overtime on both dates of claim, compliance with Appendix O, Section 6 was automatically mandated by the contract. However, the Organization has a burden of proof problem on this point, because the fundamental issue in this case is not really a question of geography. It is a question of scope. The fact is, the Organization did not demonstrate that the work in question was actually B&B work to begin with. Therefore, there is no contractual foundation upon which the Organization can claim that it belonged to any member of the subdepartment or bargaining unit, never mind this Claimant.

Moreover, the Organization failed to show that, even absent any reference to "assisting Water Service employees" in the parties' classification of work rule, such work has historically and traditionally been performed by members of the B&B subdepartment. Had that been the case, Appendix O, Section 6 would, indeed have had impact on this complaint. Instead, there is absolutely no evidence in this record that the work in dispute belonged exclusively to employees in Claimant's assigned work classification. Therefore, because Appendix O expressly states, "These gangs will handle all B&B work on the district, including planed and emergency overtime..." (emphasis added), the threshold matter is "work" and not "geography." In other words, if the work itself was not actually "B&B work" to start with (and the Organization manifestly failed to demonstrate that it was), then Appendix O has no practical impact on the assignment of overtime within the work group to perform it. It is well-established that the Board's function in rules cases is to read and interpret contract language, and in every possible instance, to ascribe to words and phrases their normal meaning. Here, it is clear that Appendix O only applies to the assignment of "B&B work" overtime. The Organization did not establish that the work of assisting Water Service employees should, by agreement or practice, be so classified.

The Organization had the burden of proving every element of its case here, and when all was said and done, there was simply insufficient evidence of a genuine Collective Bargaining Agreement violation. For all the foregoing reasons, then, we rule that the claim must be, and is, denied in its entirety.

AWARD

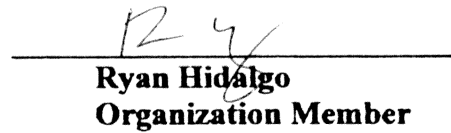
Claim denied.



ANN S. KENIS, Neutral Member



**Tim Martin Hort
Carrier Member**



**Ryan Hidalgo
Organization Member**

Dated this 25 day of March, 2014.