

PUBLIC LAW BOARD NO. 5564

Brotherhood of Maintenance of Way)	
Employees)	AWARD NO. 41
)	CASE NO. 41
and)	
)	
Northeast Illinois Regional Commuter)	
Railroad Corporation)	

STATEMENT OF CLAIM:

“Claim of the System committee of the Brotherhood that:

- 1. The Carrier violated Rule 18(k) and Appendix O, Section 20 of the Agreement on April 27, 2010 when it assigned junior work equipment mechanics to assist machine operators in loading system surfacing crew machines at Blue Island Yard and unloading system surfacing crew machines at Morton Grove, IL instead of Senior Work Equipment Mechanic J. Alvarez.**
- 2. As a consequence of the violation referred to in Part 1 above, Work Equipment Mechanic J. Alvarez shall be compensated for ten and one-half (10.5) hours at his respective overtime rate of pay.”**

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.

When events giving rise to this dispute occurred, Claimant was assigned as a System Mobile Work Equipment Mechanic with the System Mobile Resurfacing Gang. Claimant’s rest days were Tuesday and Wednesday. The record establishes that on April 17, 2010, one of Claimant’s assigned rest days, the Carrier used headquartered work equipment mechanics to load and unload “System” track surfacing equipment at the Blue Island and Morton Grove terminals. The Organization believed that Claimant should have been called in on his rest day to perform this service, and accordingly, citing Rule 18(k) and Appendix O, Section 20 in support, filed the instant claim on his behalf.

Rule 18(k) states in relevant part that, “When overtime service is required of part of a gang continuous with, before, or after the regular work period, the senior available qualified employees in the rank involved shall have preference to such overtime if they so desire.” It is not disputed that Claimant was observing one of his regular rest days when the alleged rule violation occurred. Appendix O, Section 20, also cited by the Organization in support of this claim, states, “Mechanics: Whenever there is planned or emergency overtime, such overtime will be assigned in seniority order; except that in cases when the overtime is continuous with the work being performed, the overtime will be assigned to the mechanic who is performing such work.”

In defending this claim, the Organization argued that the Carrier violated the Agreement “when it failed to provide the Claimant this overtime work opportunity based on the clear and unambiguous seniority provisions in the agreement on how overtime service will be assigned.” Here, the Organization argued, the Carrier assigned a headquartered work equipment mechanic junior to Claimant to perform the disputed work, and as such, both Rule 18(k) and Appendix O were violated. The Carrier, on the other hand, argued that neither Rule 18(k) nor Appendix O is applicable in this case. The overtime at issue was neither planned nor performed on an emergency basis, the Carrier argued. Furthermore, the Carrier argued, the work was performed continuous with the junior mechanic’s regular workday. Neither Rule 18(k) nor Appendix O, Section 20 requires the Carrier to swap out a junior on duty employee for a more senior mechanic for overtime which is continuous with the work being performed by that junior employee during his regular assignment, the Carrier argued.

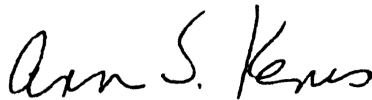
The burden is on the Organization in this case to demonstrate that Rule 18(k) and/or Appendix O, Section 20 should be applied as the Organization suggests, for indeed, the Carrier is correct in stating that neither contains specific provisions which would support the success of this claim. First, Rule 18 clearly applies to overtime “continuous with, before or after the regular work period...” The overtime at issue in this case was not “continuous with, before, or after” Claimant’s regular work period, and this is not disputed. In point of fact, Tuesday, April 27, 2010, the date of the alleged violation, was Claimant’s assigned rest day. Second, Appendix O, Section 20 controls “planned or emergency” overtime, and the overtime worked by the junior on-duty mechanic on April 27th was neither “planned” nor “emergency” in nature. Instead, it was overtime worked continuous with his regular assignment, and as the Carrier correctly notes, there is nothing in either cited contract provision which would have required the Carrier to send him home and bring Claimant in. Had the Organization demonstrated that the parties consistently did so in spite of the absence of such a stated contractual requirement (in other words had the Organization been able to substantiate a mutual understanding consistent with its position in this case), the outcome of this claim might have been different. As it is, however, cited Agreement provisions do not support this claim, and there is no evidence that they should be understood in the “expanded” manner asserted by the Organization.

The Board understands that the Organization's fundamental position in this case is that the work in question belonged "exclusively" to Claimant (as the mechanic assigned to this system gang) in the first place, and as such, he should have been called in on his rest day to perform the full extent of it, and not just the minimal overtime actually worked by the junior on-duty mechanic. However, the record does not establish that the work equipment in question was actually being used by the system gang on the date of claim, and further that a junior headquartered mechanic was called in on straight time to perform the substance of Claimant's job. Instead, the evidence shows that the headquartered junior mechanic was assigned the task of assisting in the loading and unloading of that equipment, and the Board finds nothing in either provision cited by the Organization in support of this claim which expressly prohibited that activity.

For all the foregoing reasons, then, we find that the claim, as it was presented, is without merit. Accordingly, we must, and will, rule to deny it 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.