

## PUBLIC LAW BOARD NO. 5564

<b>Brotherhood of Maintenance of Way</b>	)	
<b>Employees</b>	)	<b>AWARD NO. 43</b>
	)	<b>CASE NO. 43</b>
<b>and</b>	)	
	)	
<b>Northeast Illinois Regional Commuter</b>	)	
<b>Railroad Corporation</b>	)	

### **STATEMENT OF CLAIM:**

**“Claim of the System committee of the Brotherhood that:**

1.     **The Carrier violated the Agreement when it assigned Track Subdepartment Foreman J. N. Pizana instead of B&B Mechanic G. L. Farrington to perform flagging duties for a contractor constructing a retaining wall at the passenger station at Deerfield, Illinois in the vicinity of Mile Post 24.2 on October 27, November 1, 2, 3, 4, 5, 11, 12, and 15, 2010.**
  
2.     **As a consequence of the violation referred to in Part 1 above, Claimant G. L. Farrington shall be compensated for seventy-two (72) straight time hours and thirty and one-half (30.5) overtime hours at his respective 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 B&B mechanic headquartered at Fox Lake, Illinois. On the dates of claim, the Carrier assigned a Track Department employee to flag for a construction contractor who had been hired to renovate a passenger station on the Milwaukee District. According to the Organization, B&B employees assigned to the Fox Lake B&B crew complained to their supervisor that the assignment of a Track Department flagman was improper, because the duties at issue were specifically “associated with B&B work.” As a result, the Organization noted, the Carrier removed Trackman Pizana from the flagging job, and reassigned the task of flagging to Claimant. The**

**Organization now contends that Claimant is entitled to back-pay for every day Pizana worked before Claimant took over his duties.**

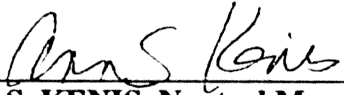
**The Carrier argues that the instant claim is without merit, because the flagging work at issue is not exclusive to B&B employees, or to employees in any other covered work group for that matter. Therefore, the Carrier argues, management was under no contractual obligation to assign Claimant (or any other B&B employee) to flag at the disputed location, even though the outsourced work being performed was “B&B type” work. The fact that Claimant took over those flagging duties from Trackman Pizana mid-project, the Carrier argues, does nothing to alter the fact that flagging in general is not, and has never been, craft-specific.**

**After examining the facts in this case, the Board is persuaded that the claim is without merit. In order for the Organization to prevail here, there would have to be evidence that the disputed work was exclusive to the B&B subdepartment within this bargaining unit. Clearly, it is not, and never has been. While B&B employees may have been assigned flagging duties in this context in the past, and perhaps even on a regular basis, the fact remains that flagging has not been, either contractually or practically, exclusive to Claimant’s specific work group or to the bargaining unit in general. The record actually establishes that flagging on this property has been performed by contractors and management personnel as well. While a Carrier supervisor apparently honored a bargaining unit (subdepartment) complaint that a member of Claimant’s work crew, and not a Track Department employee, should be permitted to perform the disputed flagging work, that fact alone falls short of proving that Claimant had a sole and exclusive right to that work from the beginning. The record clearly shows otherwise. The Organization cited no contract provision establishing exclusivity in this setting, and neither did the Organization demonstrate a consistent and mutually accepted practice having the force and effect of exclusivity in the manifest absence of clear contract language so stating.**

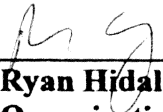
**For that and all the foregoing reasons, then, the Board concludes that the claim is without merit. Accordingly, we rule to deny it in its entirety.**

**AWARD**

**Claim denied.**

  
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**ANN S. KENIS, Neutral Member**

  
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**Tim Martin Hort  
Carrier Member**

  
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**Ryan Hidalgo  
Organization Member**

**Dated this 25<sup>th</sup> day of March, 2014.**