

PUBLIC LAW BOARD NO. 7096

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **UNION PACIFIC RAILROAD COMPANY (FORMER CHICAGO**
 NORTHWESTERN TRANSPORTATION COMPANY)

STATEMENT OF CLAIM

Claim of the System Committee
of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Assistant Foreman J. Pekelsma to perform overtime service in the Cal Avenue Yard near Mile Post 2.6 on the Geneva Subdivision on January 10 and 11, 2004 and instead assigned junior employe W. Luckett (System File 9SW-2078T/1397774 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Pekelsma shall now be compensated for sixteen (16) hours at his applicable time and one-half rate of pay.

OPINION OF BOARD

Rule 23(L) provides:

RULE 23 - WORK WEEK

* * *

L. Work on unassigned days - Where work is required to be performed on a day which is not a part of any assignment, it may be performed by an

available extra or unassigned employee who shall otherwise not have 40 hours of work that week; in all other cases by the regular employee.

Claimant and W. Luckett both held Assistant Forman positions with the same Monday - Friday work schedules. Claimant was senior to Luckett.

According to the Carrier, Luckett was assigned to the Cal. Ave. M19A B&B Gang 3648 having the responsibility for all yard work and the Main Line work from Western Ave. to 25th Ave. Interlocking. Further, according to the Carrier, Claimant was assigned to M19A Gang 3709 - a shop crew doing indoor work at M19A.

According to the Organization, Claimant was assigned to Gang 3709 headquartered at the M19 Shop at Western Ave. and Luckett was assigned to Gang 3648 also headquartered at the M19A Shop at Western Ave. The Organization further asserts that Claimant and

Luckett appeared on the same seniority roster.

On January 10 and 11, 2004, a Sheet Metal Worker needed assistance of a B&B member to repair a fire hydrant in the Cal Avenue Yard near MP 2.6. The Carrier polled the B&B gang 3648 — Luckett's Gang — for volunteers and eventually Luckett accepted the overtime. The Organization asserts that Claimant — who was senior to Luckett — should have received the overtime assignment.

Thus, from the record, it appears that the overtime work opportunity was outside work and that Luckett was, for purposes of Rule 23(L) and after seniority was followed, the "regular employee" on the outside gang entitled to the work. Claimant's gang was an inside shop gang. Because the work was outside and Claimant worked inside, Claimant was therefore not the "regular employee" for purposes of Rule 23(L).

In its June 23, 2004 letter, the Organization asserted that "... for the past several months Claimant .. has been assigned to perform outside duties in the Cal Avenue Yard ... to assist the Sheet Metal Workers in the installation and repair of fire hydrants ... [and that] Claimant ... performed the same duties during

the preceding week of the overtime work on January 10 and 11, 2004 [and] he was the regular employee within the meaning and intent of Rule 23" In support of that assertion, the Organization did not present a statement from Claimant to establish that fact, but only stated in its June 23, 2004 letter that "[t]he payroll records for this period, which you have access to, will show the location and description of the duties performed by Claimant ... during this time period."

In its August 23, 2004 response, the Carrier produced Claimant's work history and labor distribution report for Claimant and Gang 3709 and concluded "[n]owhere in the record does it demonstrate that ... Claimant assisted Sheet Metal Workers in the installation and repair of fire hydrants."

If substantiated, the Organization's assertion that Claimant was performing the work prior to the disputed overtime assignment would have given great — indeed, determinative — weight to its argument that Claimant and not Luckett was the "regular employee" for purposes of Rule 23(L) in this case. However, the Carrier's assertion with respect to the time records was not factually

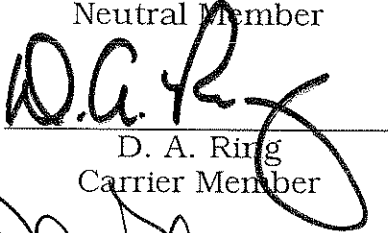
refuted by the Organization. At best, there is a factual dispute with respect to what work Claimant was actually performing in the weeks prior to the disputed overtime opportunity. But the burden is on the Organization to demonstrate the essential elements of its claim. That factual dispute is insufficient to meet the Organization's burden.

AWARD

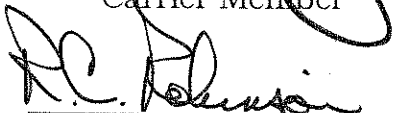
Claim denied.



Edwin H. Benn
Neutral Member



D. A. Ring
Carrier Member



R. C. Robinson
Organization Member

Chicago, Illinois

Dated: April 8, 2008