

PUBLIC LAW BOARD NO. 5564

Case No. /Award No. 103
Carrier File No.: 8-2019-14
Organization File No.: C-19-M-O020-2
Claimant: A. Lopez

NORTHEAST ILLINOIS REGIONAL)
COMMUTER RAILROAD CORPORATION)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION- IBT)
RAIL CONFERENCE)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when it assigned University Park territory Track Foreman Cardenas to perform planned overtime work of working with the rail grinder on the South Chicago Branch and Blue Island Branch of the Metra Electric District on March 30, 31, April 1 and 2, 2019, instead of assigning Mr. A. Lopez who was the foreman assigned to South Chicago Branch and Blue Island Branch territory on the Metra Electric District (System File C-19-M-O020-2/8-2019-14 NRC).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant A. Lopez shall now be compensated ‘... sixteen (16) overtime hours and thirtyeight (38) double time hours for March 30, 31, and April 1 and 2, 2019.’ (Employes’ Exhibit ‘A-1’).”**

FACTS:

From 7:00 p.m. on March 30, 2019 through 3:00 p.m. on March 31, 7:00 p.m. on March 31, 2019 through 3:00 p.m. on April 1, 2019; and 7:00 P.M. on April 1, 2019 through 3:30 P.M. on April 2, the Carrier assigned University Park Track Foreman

Cardenas of Gang 032, to perform overtime service pertaining to rail grinding from 67th Street to 92nd Street on the South Chicago Branch, and from Kensington to Blue Island on the Blue Island Branch. Both Foreman Cardenas and Claimant held track foreman positions in their respective territories.

The parties' Agreement states as follows in pertinent part:

RULE 1. SCOPE.

(a) These Rules govern the hours of service, rates of pay, and working conditions of all employees in the Maintenance of Way Department, as listed by Subdepartment in Rule 2, and other employees who may subsequently be employed in said Department, represented by the Brotherhood of Maintenance of Way Employees.

* * *

RULE 2. SUBDEPARTMENTS - SENIORITY GROUPS AND RANKS. (a) The seniority rights of employees will be confined to subdepartments and groups as provided hereinafter and shall extend throughout the Carrier's entire suburban passenger operation, which on the effective date of this Agreement is comprised of the territory from Chicago to Joliet (excluding the Heritage Corridor but including the CWI Branch), Chicago to Big Timber, Chicago to Fox Lake, Chicago to University Park (including the South Chicago Branch and the Blue Island Branch), Chicago to Manhattan between MP 8 at 74th street and MP 40.9, and the yards at Western Avenue, Fox Lake, Elgin and Antioch. The rank sequence of employees within the various groups shall be as shown below, the lowest number designating the highest rank in the group.

Track Subdepartment

Group A

Rank 1 – Track Inspectors
Rank 2 – Foremen
Rank 3 – Assistant Foremen
Rank 4 – Clean-up Foremen
Rank 5 – Trackmen

* * *

RULE 3. CLASSIFICATION OF WORK. The denominations within the various subdepartments listed below set forth the type of work that shall be performed by employees assigned to each respective subdepartment and group and the primary duties of the employees assigned to classifications within each group.

* * *

Track Subdepartment

Group A - Employees assigned to perform the work involved in the construction, maintenance, repair and dismantling of track roadway, and any other related work generally recognized as being Maintenance of Way work in the Track Subdepartment.

* * *

Rank 2 - Foremen - Employees directing the work of men and reporting to officials of the Carrier and/or Track Inspectors.

* * *

RULE 18. OVERTIME. (a) Time worked following and continuous with the regular eight (8) hour work period shall be computed on the actual minute basis and paid for at the time and one-half rates, with double time computed on the actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of the employee's regular shift.

(b) Time worked continuous with and in advance of the regular eight (8) hour work period, if six (6) hours or less, shall be paid at the time and one-half rate until the beginning of the regular work period, and then at the straight-time rate during the regular eight (8) hour work period; and, if in excess of six (6) hours, the time and one-half rate shall apply until the double-time rate as provided for in paragraph (c), below, becomes applicable or until released for eight (8) hours or more. Such release, upon completion of six (6) hours or more actual work, will not constitute a violation of paragraph (g), below.

(c) For time worked in excess of sixteen (16) hours following the beginning of the employee's regular starting time, the double-time rate will apply until the employee is released for at least ten (10)

hours. (d) In instances where the employee reports to work in overtime service other than provided for in paragraphs (a) or (b), above, the twenty-four hour period for purposes of applying paragraph (c), above, shall commence at the time the employee reports for such service. Each successive twenty-four hour period will be computed in a like manner until the employee is released from duty in accordance with paragraph (c), above.

* * *

(i) Employees will not be required to suspend work during their regularly assigned work period for the purpose of absorbing overtime.

* * *

(k) 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.

APPENDIX O

OVERTIME

AGREEMENT between the Northeast Illinois Regional Commuter Railroad Corporation and the Brotherhood of Maintenance of Way Employees IT IS AGREED:

In the application of Rule 17. Call Rule and Rule 18. Overtime of the April 16, 1984 General Rules Agreement, as amended, the following procedures will govern the assignment of overtime, whether planned or emergency.

* * *

Section 2. Metra Electric - Track: This district is broken down into three areas; north of 70th Street to Randolph, 70th Street to M.P. 15.22, including both the South Chicago and Blue Island Branch, and south of M.P. 15.22 to University Park. Those gang numbers are 030, 031, and 032 respectively. Any overtime, either planned or emergency, is offered to the gang normally assigned to that area. Seniority within individual gangs is always honored. If additional gangs are required,

then the adjacent gang is asked. Gang 031 would be called first to assist either Gang 030 or Gang 032. Then if more help was required, the third and furthest gang away would get the opportunity for the overtime.

Any overtime help for Gang 031 would go to the adjacent gang closest to the work area with 95th Street being the dividing line. All work north of 95th Street would be supplemented by Gang 030 and work south including 95th Street would be supplemented by Gang 032.

CARRIER POSITION:

The Carrier has consistently maintained that Cardenas had been working in the capacity of a track inspector, and that over the disputed dates he was assigned to inspect the rail following a rail grinder. The Organization has attempted to question the veracity of these facts, but provides no reason why the Chief Engineering Officer's statements should not be credited.

Generally, the only employees required for rail grinding are a machine operator to operate the machine and a track inspector to inspect the rail behind the machine. The Organization has not explained why a track foreman would be required for this task, or what track foreman duties Cardenas may have performed.

Contrary to Cardenas, Claimant was not qualified to work as a track inspector and had not achieved seniority in the rank.

ORGANIZATION POSITION:

Appendix O, Section 2 governs the assignment of overtime for employees headquartered on the Metra Electric District, working in the Track Subdepartment. Claimant was a Track Subdepartment employee working on a gang expressly named in Section 2 on the Metra Electric District. Consequently, there can be no question that Appendix O, Section 2 controls the disposition of this overtime dispute. Section 2 of Appendix O requires that any overtime, either planned or emergency, be offered to the gang normally assigned to that area.

Since there is no evidence of an emergency prior to the contested assignment, none can be credited.

DECISION:

Rule 2 is titled ‘Subdepartments – Seniority Groups and Ranks.’ Subsection (a) of this provision states that “The seniority rights of employees will be confined to subdepartments and groups as provided hereinafter ... * * * The rank sequence of employees within the various groups shall be as shown below, the lowest number designating the highest rank in the group.” In the track Subdepartment, Group A, Rank 1 is track inspectors; Rank 2 is foremen.

Rule 3 addresses classification of work stating: “The denominations within the various subdepartments listed below set forth the type of work that shall be performed by employees assigned to each respective subdepartment and group and the primary duties of the employees assigned to classifications within each group.”

The Carrier asserts it needed a track inspector for the work in question, and contends that Cardenas’ assignment as a track inspector was continuous with the work being assigned. The Organization attacks these statements as unproven. However, it is the Organization that has the burden of proof in this case. The statements in Chief Engineering Officer C. Krakar’s correspondence, though far from being the best evidence that could have been submitted, are the only evidence submitted on these contested facts. As a result, it cannot be said that the Organization has met its burden of proof in this case.

AWARD:

The claim is denied.

July
13, 2023



Patricia T. Bittel, Neutral Member



John Schlismann, Employee Member



Sylwia Dutka, Carrier Member