

PUBLIC LAW BOARD NO. 5564

Case No. /Award No. 109
Carrier File No.: 8-2019-20
Organization File No.: 19 05 13 (022)
Claimant: J. Sherman

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement from May 13 to May 23, 2019 when it assigned junior Mechanic V. Gonzalez to perform forty-five and one-half (45.5) hours of overtime service at the exclusion of senior employee, J. Sherman [System File 19 05 (022) /8-2019-20 NRC].

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Sherman shall now be compensated ‘... forty-five and one-half (45.5) hours at the time and one-half rate of pay for which totals \$2356.67.’ (Emphasis in original) (Employees’ Exhibit ‘A-1’).”

FACTS:

Claimant holds a Work Equipment Mechanic seniority date of December 21, 2004. Work Equipment Mechanic V. Gonzalez holds a Work Equipment Mechanic seniority date of July 14, 2011.

On May 10, 2019, Gonzalez was on vacation. On May 13 - 23, 2019, the Carrier assigned Gonzalez to perform overtime service. Applicable provisions of the parties' Agreement state as follows in pertinent part:

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.

* * *

Work Equipment Subdepartment

* * *

Group B - Work Equipment Repairers

Rank 1 - Leading Work Equipment Mechanics

Rank 2 - Work Equipment Mechanics

Rank 3 - Work Equipment Assistant Mechanics

* * *

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.

* * *

(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.

CARRIER POSITION:

The Carrier contends that Work Equipment Manager M. Neskovic asked all employees if they wanted to work the claimed overtime, and Gonzalez was the only employee who volunteered.

In its view, the Organization's claim does not have enough information to establish a prima facie case. The Organization failed to provide any evidence to show that Claimant was qualified, available, or entitled to this overtime assignment. The only fact which has been established in the record is that Claimant was senior to Gonzalez.

Rule 18(k) applies when overtime is required from "part of a gang," so an employee must first be "part of a gang" in order to be eligible for overtime associated with that gang's work. The phrase "senior available qualified" refers to the seniormost member of that gang in the rank involved.

As has been pointed out by Referee Kenis previously before this Board in PLB 5564 Award 41, Rule 18(k) applies when the overtime is "continuous with, before, or after" Claimant's 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. The Organization also failed to show that Claimant was available for this overtime assignment, as on May 17, 2019 Claimant observed a vacation day, and on May 21, 2019 he observed a personal leave day.

Even if the Organization were able to show that the most senior Work Equipment Mechanic was entitled to this particular overtime assignment, Claimant was not the most senior; R. Ballard was senior to Claimant.

ORGANIZATION POSITION:

The Organization provided multiple statements from 5 work equipment mechanics who asserted they were not asked whether they wanted to perform the contested overtime work.

Rule 18(k) clearly provides that overtime service will be assigned in seniority order. The record reveals that Claimant is senior to employee V. Gonzalez in the Group B, Rank 2, Work Equipment Mechanic classification of the Work Equipment Subdepartment. This Board has already held in Award 49 of PLB 5564 that Rule

18(k) requires the Carrier to assign overtime opportunities to the senior, qualified employee within the rank involved.

DECISION:

Insofar as Claimant was not the senior Work Equipment Mechanic in the Work Equipment Subdepartment, he does not have the standing necessary to process this claim.

AWARD:

The claim is denied.

July 13, 2023



Patricia T. Bittel, Neutral Member



John Schlismann, Employee Member



Sylwia Dutka, Carrier Member

EMPLOYEE MEMBER'S DISSENT
TO
AWARD 109 OF PUBLIC LAW BOARD NO. 5564
(Referee P. Bittel)

The majority erred in its finding when it held that "Insofar as Claimant was not the senior Work Equipment Mechanic in the Work Equipment Subdepartment, he does not have the standing necessary to process this claim." The record established that employee R. Ballard held a seniority date of October 13, 2000; the Claimant held a seniority date of December 21, 2004, and that the junior employee improperly assigned to the claimed work held a seniority date of May 10, 2019. All employees involved held positions in the Carrier's Work Equipment Subdepartment. The greater weight of evidence demonstrated that the Carrier did not ask employees in the Work Equipment Subdepartment in seniority order if they desired the claimed overtime work prior to assigning the work to the junior employee. It is well established by Section 3 arbitration boards that who the Organization names as Claimant is incidental to the Agreement violation. This concept is well stated by Arbitrator Ritter in NRAB Third Division Award 18557 which states, in pertinent part as follows:

"**** The essence of the claim by the Organization is for Rule violation and the penalty Claim is merely incidental to it. The fact that another employee may have a better right to make the Claim is of no concern to Carrier and does not relieve Carrier of the violation and penalty arising therefrom."

See also NRAB Third Division Awards 10575, 20090, 29107, 25860, 25918, 30657, 32440 and Award 181 of PLB No. 7163 which held similarly. Therefore, we submit that the Agreement was violated when the Carrier assigned a junior work equipment mechanic in lieu of calling senior work equipment mechanic in the Work Equipment Subdepartment. We further submit that in accordance with the aforementioned well-established precedent on this issue, the Claimant did have the standing necessary to process this claim.

For these reasons, I respectfully dissent.


John Schlismann
Employee Member