

PUBLIC LAW BOARD NO. 5564

**Case No. /Award No. 124
Carrier File No.: 8-2018-17
Organization File No.: 18 05 06
Claimant: D. Butler**

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

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when it allowed J. Jauregui, who is assigned to a B&B Gang on the SWS District, to perform planned overtime work of removing crosswalks at/near Beverly Mile Post 13.7 on the Rock Island District on May 6, 26, 27 and June 3, 2018, instead of assigning D. Butler, who was assigned to the Bridge and Building (B&B) Capital Gang headquartered at Blue Island on the Rock Island District (System File 18 05 06/8-2018-17 NRC).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant D. Butler shall be compensated ‘... twelve (12) hours at his assigned B&B Assistant Foreman time and on (sic) half rate of pay on May 6, 2018, thirteen (13) hours’ time and on (sic) half rate of pay for May 26, 2018, thirteen (13) hours’ time and on (sic) half rate of pay on May 27, 2018, and fifteen (15) hours’ time and on (sic) half rate of pay on June 3, 2018 which totals \$2441.45 for our claimant.’ (Employees’ Exhibit ‘A-1’).**

FACTS:

On May 6, 26, 27 and June 3, 2018, the Carrier allowed J. Jauregui to perform planned overtime work consisting of removing crosswalks at/near Beverly Mile Post 13.7 on the Rock Island District. While the Organization contends Jauregui was on the SWS, the Carrier asserts he was headquartered at Rock Island. Both parties maintain the other has taken contradictory positions in other cases.

The Organization alleges breach of the parties' Agreement. Applicable provisions of that Agreement state as follows in pertinent part:

RULE 18. OVERTIME. 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.

* * *

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 5. Rock Island - B&B: This district is broken down into three areas: LaSalle Street to M.P. 0.4 is normally assigned to the LaSalle Street Crew; M. P. 0.4 to Joliet is normally assigned to Blue Island Gang No. 1; and C.W.I. and the Heritage Corridor are normally assigned to Blue Island Gang No. 2. These gangs handle all B&B work on the district, including planned and emergency overtime. Any such overtime, either planned or emergency, is offered to the gang normally assigned to that area. Seniority within individual gangs is always honored. -- Any overtime help for LaSalle Street Gang would first go to Blue Island Gang 1 and then to Blue Island Gang 2. -- Any overtime help for Blue Island Gang 1 would first for to Blue Island Gang 2 and then to LaSalle Street Gang. -- Any overtime help for Blue Island Gang 2 would first go to Blue Island Gang 1 and then to LaSalle Street Gang.

* * *

Section 8. Southwest Service - B&B: One gang handles all work, including all overtime, on this district. If additional assistance is needed, Blue Island Gangs 1 & 2 will be called in seniority order. If additional employees are still required, other Rock Island B&B employees will be called in seniority order. * * *

Section 17. When all criteria covered under items one through sixteen have been met, then assigned capital gang employees followed by mobile system gang employees working on that particular district are called next in seniority order. (i) When all such qualified employees have been called on the Rock Island District, then qualified employees from the SWS are called, followed by qualified employees from the MED, and then those from the MWD, all in seniority order.” - - - -

March 28, 2006

* * *

This is in regard to the application of the General Agreement between the Northeast Illinois Regional Commuter Railroad Corporation and the Brotherhood of Maintenance of Way Employees, particularly in regard to the assignment of district gangs. It is understood that such gangs will be established for the purpose of performing work on a particular district and will be assigned to perform work only within that district, except in the event of an emergency. The delineation of

districts as set forth in Appendix 'O' will govern in the application of this letter of understanding. In other words, the system will be divided into four districts: Rock Island, Metra Electric, Milwaukee, and Southwest Service. In other than emergency situations, arrangements may be made for temporary cross-district assignment of gangs by agreement between the parties. Please signify your concurrence in the space provided below.

CARRIER POSITION:

Claimant had no connection to the maintenance work performed by Jauregui on the Beverly Subdivision on the RID. The work on the Beverly Subdivision removing and replacing crosswalks was maintenance work, not capital work. The Carrier provided work order reports demonstrating that Jauregui had worked on the Beverly Subdivision during the work weeks preceding the overtime at issue. The work reports clearly demonstrated that Claimant was not assigned to assist with the BI Maintenance Gang at any point. This evidence was never rebutted by the Organization.

During the workweeks before the overtime in question, employee Jauregui and his gang worked with a Rock Island gang removing crosswalks at 119th Street. During that same timeframe, Claimant worked with his gang at 111th Street. The overtime work at issue in this case was a continuation of employee Jauregui's work during the workweek. In the Carrier's view, the Organization's case depends on Jauregui being headquartered at SWS, when the Carrier has refuted that. As the Carrier sees it, there is no evidence to demonstrate that Claimant should have supplanted Jauregui on the dates in question.

The Carrier asserts that Appendix O does not determine Claimant's right to the disputed overtime because he was not "part of a gang" and had no connection to the work. Preference for overtime must first be given to the members of the gang involved in the work, and there is no language in Appendix O Section 5 which states otherwise. In the instant claim, the members of Blue Island Maintenance Gangs #2 worked on the Beverly Subdivision during the preceding work week prior to each overtime date in dispute. In contrast, Claimant was not a member of BI Maintenance Gang #2 and had been fully employed working on a separate project on the RID.

The Carrier argues that the Organization has offered no evidence to support its claim that Jauregui was assigned to a B&B Gang headquartered at Orland Park on the SWS District. When there are disputes in material facts of a case, the arbitral precedent is clear that the Board must dismiss the claim. Finally, the Carrier noted

that there was no proven loss of work opportunity, and the Organization inflated and misrepresented the amount of overtime performed by Jauregui.

ORGANIZATION POSITION:

Claimant is the senior, regularly assigned employee on the B&B Capital Gang headquartered at Blue Island on the Rock Island District. On the dates in question, J. Jauregui, who is assigned to a B&B Gang headquartered at Orland Park on the SWS District, performed Maintenance of Way B&B Subdepartment overtime work on the Rock Island District. The Carrier's failure to assign Claimant to the work of concern was a violation of Section 17 of Appendix O of the Agreement.

This was planned work and not an emergency. The Organization cites Awards 53, 55, 58 and 69 of PLB 5564 for the proposition that the Carrier is required to assign B&B work in a specific district, including planned overtime, to members of the gangs designated in those districts as provided in Appendix O of the Agreement.

Under Section 17 of Appendix O, Claimant need only be part of a capital gang working on the Rock Island District to have preference for the work in question.

DECISION:

The Carrier is correct in that the Organization has not offered evidence to support the claim that employee Jauregui was assigned to a BYB Gang headquartered at Orland Park on the SWS District. Without evidence of Jauregui's assigned gang and district, this claim cannot be granted.

AWARD:

The claim is denied.

July 13, 2023



Patricia T. Bittel, Neutral Member

A handwritten signature in black ink, appearing to be 'John Schlismann', with a long horizontal stroke extending to the right.

John Schlismann, Employee Member

A handwritten signature in black ink, appearing to be 'Sylwia Dutka', with a large circular flourish.

Sylwia Dutka, Carrier Member