

PUBLIC LAW BOARD NO. 5564

**Case No. /Award No. 125
Carrier File No.: 8-2018-18
Organization File No.: 18 05 14
Claimant: T. Evans**

**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 Mr. C. Miller, who is assigned to a Catenary Gang not listed in Appendix O, to perform planned overtime work of wrapping pillars at the 63rd Street Bridge on the Metra Electric District on May 13, 2018, instead of assigning T. Evans who was assigned to Gang 232 headquartered at 14th Street on the Metra Electric District (System File 18 05 14/8-2018-18 NRC).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant T. Evans shall now be compensated ‘... ten (10) hours at his assigned time and on (sic) half rate of pay which totals \$456.00.’ (Employees’ Exhibit ‘A-1’).”**

FACTS:

The Carrier allowed employee Miller, who is assigned to Catenary Gang 1, to perform planned B&B overtime work consisting of wrapping pillars at 63rd Street Bridge on the Metra Electric District. The Organization contests the assignment of overtime, alleging Claimant should have worked it.

Applicable provisions of the parties' Agreement state as follows in pertinent part:

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. * * *

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 6. Metra Electric - B&B: This district is broken down into three areas: 95th Street north to Randolph Street, including the South Chicago Branch, is normally assigned to Gang 232; 95th Street south to Harvey, including the Blue Island Branch, is normally assigned to Gang 230; and Harvey to University Park is normally assigned to Gang 231. In total, the district has five gangs. Gangs 230, 231, and 241 are headquartered at KYD; Gang 232 is headquartered at 14th Street; and Gang 240 is headquartered at Randolph Street. 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 Gang 231 would first go to Gang 241 and then in order to Gangs 230, 232, and 240.

-- Any overtime help for Gang 230 would first go to Gang 241 and then in order to Gangs 231, 232, and 240.

-- Any overtime help for Gang 232 would first go to Gang 240 and then in order to Gangs 230, 241, and 231.

CARRIER POSITION:

The employees in Catenary Gang #1 and #2, including C. Miller, had all completed a four-day training session led by the manufacturer of the epoxy wrap. This training was required by the manufacturer for all employees involved in the wrap's installation in order to retain the warranty. Installation by untrained employees would void the warranty on the wrap, and could lead to an unsafe condition if the wrap were installed incorrectly. At this time, these two gangs had about two years' worth of experience wrapping columns.

Because Miller had been performing this work during his regular work week, and was trained and qualified, he was offered an overtime assignment to continue wrapping columns on Sunday, May 13, 2018. Overtime in connection with a capital project is controlled by Appendix O, Section 18, and not Section 6. PLB 5564 Awards 41, 56, and 57 held that the connection to the work is superior to seniority in the assignment of overtime. In PLB 5564 Award 41, Referee Kenis explained:

Appendix O, Section 20 controls 'planned or emergency' overtime, and the overtime worked by the junior on-duty mechanic on April 27th was neither 'planned' nor 'emergency' in nature. Instead, it was overtime worked continuous with his regular assignment, and as the Carrier correctly notes, there is nothing in either cited contract provision which would have required the Carrier to send him home and bring Claimant in.

In Award 57, Referee Rogers described it this way:

The July 5, 2012 overtime work at Palos Park was time worked continuous with the Gang's regular 8 hour tour. Therefore, the Gang's assignment was a continuation of a work assignment and not an overtime work assignment within the meaning of Appendix O, Section 5. For this reason, the Board finds that the facts do not support a finding of a violation of the Agreement...

The Carrier argues that the Organization has not shown that Claimant was trained and qualified to perform the work of wrapping bridge columns; they have provided no evidence that Claimant completed the training required by the manufacturer, or had any experience wrapping bridge columns. The Carrier explains that the columns of these bridges were wrapped in order to strengthen the structural integrity of the bridges over which the Carrier's trains travelled. Improper installation by employees not trained in how to properly wrap the bridge columns could result in the columns not being strengthened as intended, leading potentially to unsafe bridges. The Carrier cannot be expected to place the safety of its employees and passengers in jeopardy, only so it can offer preferential treatment to senior employees.

The Carrier notes that both Catenary Gangs are Capital Gangs, and wrapping bridge columns was a capital project which they were performing during their regular work periods. Therefore, under Section 18, all overtime work in connection with this capital project accrued to the Catenary Gangs before it could be assigned to Maintenance Gangs on the district.

The Organization's suggested interpretation would lead to the illogical result that any gang not explicitly listed in Appendix O Section 6 would have no entitlement to any overtime assignment on the MED. Various gangs not listed in Section 6 have and continue to work on the MED, such as the two Catenary Gangs implicated in this dispute. To suggest that entire gangs of employees who properly perform work on the district at straight time are categorically prohibited by the Agreement from being assigned overtime on that same district is illogical on its face, and not otherwise supported by the Agreement. Referee Vernon in Second Division Award 8700 summarizes the consensus view that interpretations of the Agreement which lead to illogical results ought to be rejected.

ORGANIZATION POSITION:

The Organization asserts that Catenary Gang 1 did not regularly perform this work on May 9, 10, 11, 12, 2018. Catenary Gang 1 is not listed in Appendix O, there was no continuity of work, and the claimed work was not of an emergency nature. Therefore, the Agreement was violated when the Carrier assigned an employee from Catenary Gang 1, which did not regularly perform this work, on May 9, 10, 11 and 12, 2018. Significantly, Catenary Gang 1 is not listed in Appendix O.

Claimant was a B&B Subdepartment employee working on a gang expressly named within Section 6 on the Metra Electric District. Consequently, Appendix O, Section 6 controls the disposition of this overtime dispute.

Section 6 of Appendix O expressly stipulates that all B&B work including planned overtime will be handled by gangs assigned to areas within a specific district. In addition, Section 6 of Appendix O further provides that any overtime from 95th Street north to Randolph Street, including the South Chicago Branch is normally assigned to members of Gang 232. In this case, Claimant was regularly assigned to a B&B position on Gang 232, and the work claimed herein occurred at 63rd Street, which is between 95th and Randolph Streets on the Metra Electric District. It follows that Claimant's regular assignment on Gang 232 entitles him to all B&B overtime work opportunities occurring at 63rd Street on the Metra Electric District.

The Carrier did not provide evidence of what work Catenary Gang 1 performed on May 12, 2018. Thus, on this basis alone, this Board must draw an adverse inference that the Carrier has failed to demonstrate any continuity or regular performance of the claimed work.

Catenary Gang 1 performed work consisting of: taking a rules test May 11, 2018; performing catenary maintenance on May 10, 2018; and performing catenary maintenance on May 9, 2018. Clearly, Catenary Gang 1 was not regularly assigned to the work of wrapping columns. There is no Work Report for May 12, 2018, and work reports from May 11, 10 and 9 all reference other work.

In the absence of any evidence of Catenary Gang 1 regularly performing the work of wrapping pillars at 63rd Street, employee Miller had no right to perform this work at the exclusion of Claimant. The work was B&B work, not Catenary maintenance work. As a result, it had to be assigned in accordance with Section 6 of Appendix O. The Carrier's contention that Appendix O is not applicable to Rule 18(k) must be rejected.

All awards cited by the Carrier in its letter dated November 19, were decided under an entirely different Agreement. Moreover, a reading of Award 57 of PLB 5564 is distinguishable because the work claimed here was not a continuation of Miller's daily assignment, but was clearly work performed 5 days after similar work was last performed. The Organization concludes that the work involved was not continuous with, before or after the regular work period.

DECISION:

Claimant is in structures Gang 232. There is no evidence that he had either wrapped columns before or been trained to do it. C. Miller was a B&B Mechanic assigned to Catenary Gang 1.

The Carrier's work orders are a record kept in the ordinary course of business and are a reliable source of information. They show that Miller worked wrapping

columns on May 7 and 8, and had other duties in the intervening time before May 13. These work orders substantiate the Carrier's contention that Claimant wrapped columns as a regular assignment but not that the work at issue was continuous with such a regular assignment.

We find that the Carrier was not required to call in an inexperienced and unqualified gang when it already had employees who had recently been assigned the work needed to be done. This is a logical and reasonable interpretation of the parties' Agreement; the contract reader is obliged to avoid an absurdity, and placing untrained and inexperienced workers on a project requiring structural integrity for basic safety would be an absurd result.

Since Work Orders 193665 and 193674 establish that Miller had performed the work of wrapping columns as a regular part of his routine assignment, the Carrier was not required to call up employees from another gang to do the work of wrapping columns.

AWARD:

The claim is denied.

July 13, 2023



Patricia T. Bittel, Neutral Member



John Schlismann, Employe Member



Sylwia Dutka, Carrier Member