

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 22
NORTHEAST ILLINOIS REGIONAL COMMUTER)
RAILROAD CORPORATION) Award No. 16
_____)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. P. Finn, Carrier Member

Hearing Date: January 7, 2009

STATEMENT OF CLAIM:

- (1) The Agreement was violated when the Carrier called and assigned Track Inspectors A. Lopez and S. Lopez to perform track maintenance work of tamping ties, spiking ties and replacing rail in connection with the rehabilitation of the Wood Dale Crossing near Mile Post 19.2 and at the A-2 Interlocking on Sunday April 25, 2004 instead of calling and assigning Franklin Park Crew Members J. Pizano, J. Ochoa, D. Gavina and C. Ochoa (System File C-20-04-C060-06-M/08-27-497).
- (2) As a consequence of the aforesaid violation, the Claimants shall be compensated at the respective rate of pay for six (6) hours each at their time and one-half rates of pay.

FINDINGS:

Public Law Board No. 5565 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

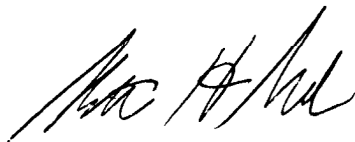
On April 25, 2004, Carrier assigned one Track Inspector to a road crossing renewal at Wood Dale Road and a second Track Inspector to the A-2 Interlocking. The Organization maintains that Carrier violated Rule 13 by not assigning the rest day overtime to Claimants, because the overtime involved tamping, spiking and replacing rail. Carrier maintains that the

Track Inspectors performed track inspection work and that any track maintenance work that they performed was incidental to their inspection duties. Carrier maintains that in the course of performing their track inspection duties, Track Inspectors routinely perform incidental tamping and spiking. The Carrier's Work Reports corroborate Carrier's position.

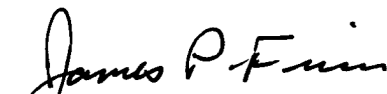
In response, the Organization relies on two statements, each signed by employees working on the projects on the day in question. Both statements assert that the employees observed the Track Inspectors tamping, spiking and replacing rail. However, Carrier does not maintain that the Track Inspectors did not perform such work on April 25, 2004; rather Carrier's position is that the work was incidental to the Track Inspectors' primary responsibility of inspecting track. The Organization has the burden of proving otherwise and, given the conclusory nature of the statements on which it relies, we find that the Organization has failed to carry its burden of proof.

AWARD

Claim denied.



Martin H. Malin, Chairman



J.P. Finn
Carrier Member



R. C. Robinson, Employee Member
Employee Member

Dated at Chicago, Illinois, March 31, 2009