

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 25
NORTHEAST ILLINOIS REGIONAL COMMUTER)
RAILROAD CORPORATION) Award No. 19
_____)

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 Carrier violated the Agreement when it failed to assign Messrs. S. Garcia, Sr., S. Garcia, Jr., S. Guerrero and G. Palomo to perform overtime service between Mile Post 8 and Mile Post 8.5 at Galewood on September 4, 5, and 6, 2004 and instead assigned junior employees E. Gavina, R. Nunez and L. Carreno (System File C-44-04-C060-18-M/08-27-512).
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. S. Garcia, Sr., S. Garcia, Jr., S. Guerrero and G. Palomo shall now be compensated for an equal proportionate share of one-hundred two (102) hours' pay at their respective time and one-half rates.

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 September 4, 5 and 6, 2004, Carrier assigned three Assistant Welders to work performed between MP 8.0 and MP 8.5 at Galewood. The Organization maintains that Carrier violated the Agreement by not assigning the rest day overtime to Claimants, because the overtime involved Trackman's work and Claimants were performing that work during the regular week

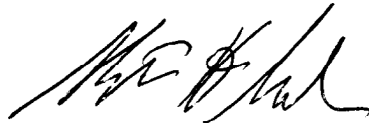
and should have received the holiday and rest day overtime. Carrier responds that the employees working on September 4 - 6, 2004, were functioning as Assistant Welders and that Claimants did not have Assistant Welder seniority.

During handling on the property, the Organization asserted that the work performed involved cutting rail and removing spikes and did not involve shaping and grinding. Carrier responded that the work performed on the holiday weekend was welding and that the employees assigned were assisting the Welders. Carrier maintained that regardless of whether the work they performed included cutting rail and pulling spikes, their responsibilities were to assist the Welders and such work was Assistant Welder work rather than Trackman work.

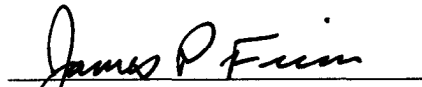
At most, the record contains conflicting assertions as to the nature of the work performed on the dates in question. The Organization provided no evidence, as opposed to assertions, on the property that the work in question was not performed in the context of assisting the Welders. Since the Organization had the burden of proof, the claim must fail for lack of proof.

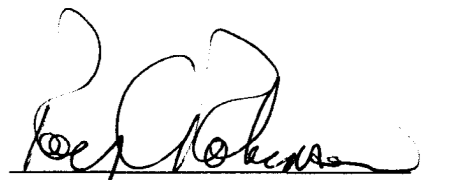
AWARD

Claim denied.



Martin H. Malin, Chairman



J. P. Finn
Carrier Member

R. C. Robinson, Employee Member
Employee Member

Dated at Chicago, Illinois, April 28, 2009