

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 5564**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 27
and	)
	) Award No. 21
NORTHEAST ILLINOIS REGIONAL COMMUTER	)
RAILROAD CORPORATION	)
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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 call and assign Machine Operator S. Martinez to perform overtime service operating a Speed Swing at the Wilson Road crossing near Mile Post 4.6 on October 17, 2004 and instead called and assigned Foreman J. Pizano to perform said overtime work (System File C-42-04-C060-17-M/08-27-511).
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operator S. Martinez shall now be compensated for thirteen (13) hours pay at his respective time and one-half rate of pay.

**FINDINGS:**

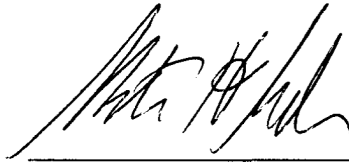
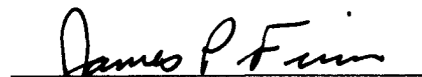

Public Law Board No. 5565 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were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

On October 17, 2004, Carrier worked the maintenance gang on a crossing project at Wilson Road. Carrier represented during handling on the property that the gang performed the same work as they had performed at straight time during the week. A speedswing was present and used as needed throughout the period. The Organization did not object during the straight time weekday work that a machine operator was required on the job. The Organization did not deny these representations during handling on the property.

Accordingly, the Organization has failed to prove that any employee was assigned to a Machine Operator position for the Sunday overtime. Therefore, the claim must fail for lack of proof.

**AWARD**

Claim denied.

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

Dated at Chicago, Illinois, April 28, 2009