# PUBLIC LAW BOARD NO. 5564

| | | |
|---|---|---|
| Brotherhood of Maintenance of Way Employees | ) | AWARD NO. 31 |
| | ) | CASE NO. 31 |
| and | ) | |
| Northeast Illinois Regional Commuter Railroad Corporation | ) | |

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that the Carrier violated the Agreement when it failed to reimburse Claimant G. Ponce for the costs of his meals in accordance with Rule 15(e) in connection with his overtime service on September 5, 12, and 13, 2009."

OPINION OF BOARD:

Public Law Board No. 5564, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

When events giving rise to this dispute occurred, Claimant was assigned as a Bridge and Building mechanic. On September 5, 12, and 13, 2009, all of which were his assigned rest days, Claimant performed more than six hours of planned overtime service flagging for a contractor at Vermont Street on the Rock Island District. The record establishes that Claimant was allowed paid meal periods on all dates of claim in accordance with Rule 15 of the Collective Bargaining Agreement, but was denied reimbursement for actual meal expenses which he claimed under Section (e) thereof.

Sections 15(d) and (e), which serve as the Organization's contractual foundation for this claim, state:

> *(d) Employees required to perform incidental overtime service not continuous with before or after the regular work period that extends for six (6) or more hours shall be allowed a meal period, not to exceed twenty (20) minutes.*

(e) ***The meal periods provided for in paragraphs (c) and (d), above, will not terminate the continuous work period and the employees shall be reimbursed for actual necessary expenses for such meals supported by receipts, if the meals are not furnished by the Carrier.***[1]

**As previously stated, there is no dispute that Claimant was allowed a paid meal period on all three dates of claim, and the Organization argues that Section (d) of Rule 15 was the sole support for that allowance. With that understanding, then, the Organization argues, subsequent Section (e) expressly provides for meal reimbursement under the particular circumstances at bar, since "meal periods provided for in paragraphs (c) and (d) will not terminate the continuous work period and the employees shall be reimbursed for actual necessary expenses for such meals..."**

**In denying the instant claims for meal expense reimbursement, the Carrier argues that the Organization has wrongfully ignored the word "incidental" as it expressly defines Section (d) overtime. In this case, the Carrier argues, Claimant did not work "incidental" overtime within the intent and meaning of that contract term, since the work he performed on his rest days in each and every instance under consideration was planned. The Carrier cites Webster's definition of the word "incidental" in support of its position, which characterizes its meaning as, "occurring merely by chance or without intention or calculation." In these present circumstances, the Carrier argues, there was nothing "by chance" about Claimant's overtime assignments. All, the Carrier argues, were planned well in advance of his actual service. More importantly, the Carrier argues, the parties have maintained this reference to "incidental" overtime in Meal Period provisions since 1984, and the Carrier has never reimbursed BMWE employees working planned overtime for actual meal expenses.**

**After carefully reviewing the record and the arguments of the parties, the Board is persuaded that the Union failed to establish that the Collective Bargaining Agreement was violated. To the extent that applicable provisions in Rule 15 may be ambiguous, the fact remains that for more than 25 years, the parties have mutually understood "incidental overtime" to mean something other than the planned overtime Claimant worked on each of the three dates of claim in this case. Indeed, had the Carrier ever interpreted the language of Rule 15 any other way (such that meal reimbursements had been allowed under these identical conditions in the past) it was incumbent upon the Organization to present evidence to that end, having the burden of proof in this contract interpretation case. There is no such proof in this record. Furthermore, and perhaps more importantly, there is <u>no</u> showing in this record that the Carrier's promulgated understanding of "incidental" overtime, as that particular term has impacted meal reimbursements under Section 15(e) for**

[1] Paragraph (c) provides for a meal period when employees are required to perform more than three (3) hours overtime service continuous with and following the regular work period.

**more than 25 years, has ever been meaningfully challenged by the Organization such that the Board should now overturn decades of mutual accord concerning this language for the sake of one isolated claim in which the Organization belatedly presents a fresh and wholly unsupported contract interpretation.**

**For all the foregoing reasons, then, we rule that the claim must be, and is, denied in its entirety.**

## AWARD

**Claim denied.**

**ANN S. KENIS, Neutral Member**

**Tim Martin Hort**
**Carrier Member**

**Kevin Evanski**
**Organization Member**

**Dated this 30 day of August, 2013.**