

PUBLIC LAW BOARD NO. 5564

Brotherhood of Maintenance of Way)	
Employees)	AWARD NO. 32
)	CASE NO. 32
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 offered and assigned the overtime service of dismantling track panels and sorting and stocking the secondhand material at Blue Island Yard on November 22, 2009 to the Capital Track Crew instead of the Claimants who were assigned to Maintenance Crew 2070.”

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.

The Claimants in this case are Track Department employees who were, when events giving rise to this dispute occurred, assigned to Maintenance Gang 2070 headquartered at Blue Island, Illinois on the Rock Island District. On November 22, 2009, the Carrier assigned a track gang other than Maintenance Gang 2070 to dismantle track panels that had been replaced as part of a capital construction project in the yard at Blue Island.

In support of its assertion that Claimants, and not members of the capital construction gang who actually performed the work, should have been called for the overtime, the Organization relied on Rule 18(k) and Appendix O, Section 1 of the Collective Bargaining Agreement, which state in relevant part as follows:

Rule 18(k)

When overtime service is required of part of a gang continuous with, before, or after the regular work period, the senior available qualified

employees in the rank involved shall have preference to such overtime if they so desire.

Appendix O

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 1.

Rock Island – Track: the district is broken down into three areas... Each area has a gang headquartered in it and they perform all work in their respective areas. A fourth gang, number 207, is headquartered at Blue Island and handles material in that yard and cuts brush, weeds, and grass on the Sub Line and assists 206 as necessary. Any overtime, either planned or emergency, is offered to the gang normally assigned to that area...

In this case, a capital construction crew disassembled used track panels that had been removed from the track in connection with Capital Project DU2939 and placed within Claimants' assigned work area at Blue Island Yard. There is no assertion on the part of the Organization that any of the construction work associated with removing the panels from the track in the first place belonged to Claimants; only that Claimants should have been called in on overtime to perform the disassembly and salvage work because the panels had been offloaded within the confines of their assigned work area as defined by Section 1 of Appendix O cited herein above.

On March 20, 2010, Claimant Eric Ewing, Foreman of Maintenance Gang 7020, wrote to Chief Engineering Officer J. L. Lorenzini in defense of this claim. In relevant part, Ewing noted that as recently as February 3, 4, and 5, 2010, he and his crew had been assigned to dismantle several panels from DU2939 in Blue Island Yard. On June 16, 17, and 30, Ewing further asserted, he and his crew had unloaded new (capital) material in Blue Island Yard, and also on site where switches were being installed attendant to the DU2939 project. Ewing also noted that on July 11 and 12, 2010, he and his crew had "worked alongside capital forces to install [the switches]" under the DU2939 project, and their labor expenditures had been charged out accordingly. Ewing argued in conclusion that, "regardless of any project number," his crew regularly handled material in Blue Island Yard, and had done so for decades. (Employee Exhibit A-3, Attachment 1.)

As noted by the Carrier, the burden of proof in this case belonged to the Organization, and as such, it was the Organization's duty to support all the elements of its claim. We find, upon the whole of this record, that the Organization

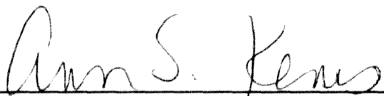
failed to do so. As a threshold matter, we are compelled to point out that Rule 18 of the Collective Bargaining Agreement establishes overtime provisions, and does not contain any peripheral reservation of work guidelines. Furthermore, while cited Appendix O (governing “the application of Rule 17, Call Rule and Rule 18, Overtime of the April 16, 1984 General Rules Agreement”) indeed defines the geographical working areas of certain headquartered maintenance crews on the Rock Island District, and further states that “any overtime (involving ‘handling of material’), either planned or emergency, [will be] offered to the gang normally assigned to that area,” it is clear from the context of the language, that the work in question is understood to be that which is normally and exclusively associated with the designated maintenance crew on straight time.

In this case, the Organization does appear to contend for the disputed work on the basis of exclusivity, but Claimant Ewing’s letter actually indicates otherwise. While he testified in writing that he and his crew regularly handled both maintenance and capital material in Blue Island Yard, he did not state (and neither did he establish with proof) that they did so on an exclusive basis without exception. Indeed, Ewing indicated that the 7020 gang had done “this [material handling] work traditionally and historically for decades,” but neither he nor the Organization satisfied their contractual burden to establish exclusivity to the extent that having another crew perform similar work within the confines of their designated territory violated the Collective Bargaining Agreement. Indeed, Claimant Ewing actually indicated that his crew and the capital crew on DU2939 “worked alongside” one another to install switches in DU2939, and all labor expenditures had accordingly been charged to that project. Thus, the Board is persuaded that there was, to some extent at least, a crossover effect in evidence in this case. In the end, the Organization failed to establish any unswerving practice on the part of the Carrier to assign all material handling work, whether capital or maintenance, overtime or straight time, exclusively to members of Maintenance Gang 2070 when it was performed within their territory as defined by Appendix O. Accordingly, we must find, for lack of proof in this record, that this claim is without contractual support.

For all the foregoing reasons, then, we find, and so rule, that the Collective Bargaining Agreement was not violated. The claim is denied.

AWARD

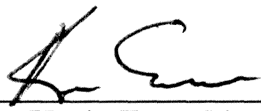
Claim denied.



ANN S. KENIS, Neutral Member



**Tim Martin Hort
Carrier Member**



**Kevin Evanski
Organization Member**

Dated this 30 day of August, 2013.