

## **PUBLIC LAW BOARD 5564**

In the Matter of Arbitration between:

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

and

**NORTHEAST ILLINOIS REGIONAL COMMUTER  
RAILROAD CORPORATION**

Case No. 44

Award No. 44

### **THE ORGANIZATION'S STATEMENT OF THE CLAIM**

1. The Carrier violated the Agreement when it assigned members of a maintenance gang, instead of Claimants, to perform capital project overtime work at 80<sup>th</sup> Avenue on the Rock Island District on January 30, 2011 (System File C110318/08-21-610 NRC).
2. As a consequence of the violation referred to in Part 1 above, employees K. Rainey, G. Ponce, D. Butler and K. Kots shall each be compensated for eight (8) hours at their respective overtime rates of pay.

### **STATEMENT OF THE CASE**

Based on the record developed by the Organization and the Carrier, this Public Law Board (Board) finds the Parties herein to be a Carrier and Employees within the meaning of the Railway Labor Act, *as amended*, and that this Board has jurisdiction over the Parties and the dispute.

This dispute is between the Brotherhood of Maintenance of Way Employees Division – IBT Rail Conference (BMWE or Organization) and the Northeast Illinois Regional Commuter Railroad Corporation (Metra or Carrier) (collectively the Parties). The dispute arises out of BMWE's claim that Metra violated the Parties' Agreement Rule 33, Appendix O, Section 13 with regard to an 80<sup>th</sup> Avenue Depot capital project.

The facts and on property handling of BMW's claim are as follows:

At the time of this dispute, Claimants, K. Rainey, G. Ponce, D. Butler and K. Kots, maintained seniority in the Bridge and Building (B&B) - Water Service Subdepartment on a Rock Island District Capital Gang.

On January 30, 2011, Carrier assigned a maintenance gang to capital project overtime involving the removal platform lights at the Rock Island District 80<sup>th</sup> Avenue Depot (80<sup>th</sup> Avenue).

On March 18, 2011, BMW asserted a claim that the assignment violated the Parties' Agreement. In particular, BMW's claim asserted,

On Sunday January 30, 2011 the carrier allowed Maintenance Bridge and Building Sub-Department Gangs # 1 and # 2 to work scheduled overtime from 6AM to 2PM assisting electricians to perform Capital Work (Platform Demolition) at 80<sup>th</sup> Avenue Depot Project on the Rock Island District.

BMW asserted that Carrier failed to assign Claimants to perform the 80<sup>th</sup> Avenue capital project overtime service in violation of the Agreement. Specifically, BMW's argued that Metra violated Appendix O, Section 18 which, BMW maintained, required that Capital Gangs are called first from the territory in which the Capital work was performed. BMW argued that B&B Gang 2 is assigned to the CWI and Heritage Corridor which should have been the last called to assist under Appendix O, Section 17 while B&B Rock Island District employees were not considered for the overtime work. BMW also asserted that the Claimants, as qualified B&B employees, possessed the skills necessary to perform the work.

On April 29, 2011, Metra responded to the claim asserting that it had no merit because the 80<sup>th</sup> Avenue work was not platform demolition, but the removal of old platform lights. The Carrier said that since Capital had no electricians working, then Maintenance electricians removed the old platform lights. Consequently, no Capital B&B Gang was assigned to 80<sup>th</sup> Avenue.

On June 24, 2011, BMWWE appealed the claim to the next level. At this level, BMWWE's claim language changed asserting now,

On Sunday January 30, 2011 the carrier allowed Maintenance Bridge and Building Sub-Department Gangs #1 and #2 to work scheduled overtime from 6AM to 2PM assisting ***Maintenance electricians to remove old platform lights*** at 80<sup>th</sup> Avenue Depot Project on the Rock Island District. (Emphasis added).

BMWWE asserted as well that "certainly the removal of old platform lights would be the beginning of a demolition project and had previously been performed by Capital Electricians, assisted by Capital Gangs not Maintenance gangs." BMWWE argued "simply because the Carrier has abolished Capital Electricians doesn't necessarily mean that the Carrier has abolished 'Capital Work.'"

On August 3, 2011, Carrier provided a more fulsome response to BMWWE's claim noting that the removal of the platform lights may have been followed by the demolition of the platform, as BMWWE claimed, but removing platform lights is not the same work as demolishing the platform. Further, the Carrier maintained that removing platform lights is a separate task, which does not accrue to any B&B employees and is not covered by the Agreement. Metra asserted as well that BMWWE cited no evidence that the Claimants were the regularly assigned gang for 80<sup>th</sup> Avenue project particularly for removing the platform lights which does not accrue to B&B employees. Metra asserted that the employees called to assist, were called to assist IBEW electricians to whom Section 18 does not apply and, as a result, the Claimants were not first in line to be called for this assignment.

Pursuant to the Agreement the dispute was conferenced on March 2, 2012, but not resolved.

The dispute is now properly before this Board for adjudication.

## RELEVANT RULES

The relevant Agreement language between BMW and the Carrier provides:

### RULE 1. SCOPE.

(a) These Rules govern the hours of service, rates of pay, and working conditions of all employees in the Maintenance of Way Department, as listed by Subdepartment in Rule 2, and other employees who may subsequently be employed in said Department, represented by the Brotherhood of Maintenance of Way Employees.

(b) Employees included within the Scope of this Agreement shall perform all work in connection with the construction, maintenance, repair, and dismantling of tracks, roadbeds, structures, facilities, and appurtenances related thereto located on the right-of-way or used in the operation of the Carrier in the performance of suburban passenger service.

\* \* \*

## APPENDIX O

### OVERTIME

AGREEMENT between the Northeast Illinois Regional Commuter Railroad Corporation and the Brotherhood of Maintenance of Way Employees

### IT IS AGREED:

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 18. All capital project overtime is performed by the regularly assigned Capital Gang. Maintenance persons assisting a Capital Gang are called first from the territory in which the Capital Gang is working. Then, depending on the subdepartment, the same procedures outlined in items one through fourteen are followed.

The relevant Agreement language between IBEW and the Carrier provides:

RULE 1. SCOPE AND CLASSIFICATION OF WORK

\* \* \*

(b) CLASSIFICATION OF WORK – Engineering Department Electricians' work shall consist of all inspecting, assembling, installing, removing, splicing, dismantling, connecting, disconnecting, overhauling, adjusting, applying, stringing, sagging, transferring, stripping, repairing, replacing, maintaining, erecting, calibrating, aligning, jig stoning, under-cutting mica, cleaning, operating, rebuilding, wiring, bonding, turning, lubricating and testing of the following in the respective A.C., ARCS, 1500 Volt D.C. and 1500 Volt Bonding Subdivisions:

OPINION OF THE BOARD

BMWE has the burden to prove all allegations in the claim. This claim is brought by B&B employees of the Rock Island District regarding overtime work at 80<sup>th</sup> Avenue on January 30, 2011. At its core, the claim is that Metra violated Appendix O, Section 18, by assigning maintenance crews from other territories to assist in overtime work performed by electricians represented by IBEW in violation of the Agreement.

However, the facts establish, and BMWE conceded in the processing of the claim, that the work, initially claimed to have taken place, was not actually the work performed at 80<sup>th</sup> Avenue on January 30, 2011. Specifically, BMWE's initial March 18, 2011 claim asserts that B&B Gangs 1 and 2 assisted electricians with **platform demolition** in violation of Appendix O, Section 18. At the next step of handling on the property, BMWE's June 24, 2011 claim describes the work by B&B Gangs 1 and 2 as assisting Maintenance electricians **to remove old platform lights** at 80<sup>th</sup> Avenue.

Agreement Appendix O, Section 18, requires that capital project overtime is assigned to Capital Gangs and the assisting maintenance persons are called first from the territory in which work is being performed. The claim challenges the Carrier's selection of gangs to assist IBEW electricians removing old platform lights from a different **territory** than where the work was being performed.

The starting point of the Board's analysis is to determine whether there was a violation of the Agreement by the Carrier not based on the *territory* of the assisting gangs, but must be based on the *scope* of the work. In this regard, BMWWE has not proven the work, removing old platform lights at 80<sup>th</sup> Avenue, falls within the scope of Agreement Rule 1. It is clear that Appendix O, Section 18, applies to, and requires, certain assignments to employees covered by the Agreement to assist other employees also covered by the Agreement. However, the Appendix O, Section 18, which establishes specific procedures for overtime assignments, cannot be read to modify or, in this dispute, expand Rule 1's coverage.

Rule 1 defines the general and overarching scope of the BMWWE Agreement. Rule 1 cannot be read to constrain the Carrier's assignment of the claimed work, which is within the scope of work of another craft, to the Claimants.

The Board finds that the record establishes that the work performed by the IBEW electricians was outside the scope of the BMWWE Agreement. In addition, BMWWE presented no evidence to prove that the Carrier's assignment of the work violated Rule 1. Therefore, since the work was outside the scope of Rule 1, then the procedures for assigning BMWWE employees to assist in the 80<sup>th</sup> Avenue work do not apply because the work was not capital project overtime performed by the regularly assigned Capital Gang.

The Board finds that since the work at 80<sup>th</sup> Avenue was performed by Metra's IBEW employees, BMWWE has not proven a violation of Appendix O, Section 18.

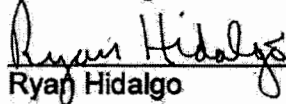
Based on the record developed by the Parties, the unique facts of this claim and for the reasons discussed above, BMWWE's claim is denied.

PLB 5564  
Case No. 44  
Award No. 44


**AWARD**

Claim denied.

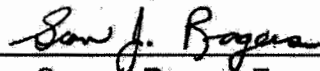
For the Organization:

  
\_\_\_\_\_  
Ryan Hidalgo  
Public Law Board Advocate  
BMW-IBT

For the Carrier:

  
\_\_\_\_\_  
Tim Martin Hort  
General Director - Labor Relations  
Metra

Neutral Member:

  
\_\_\_\_\_  
Sean J. Rogers, Esq.  
Sean J. Rogers & Associates, LLC  
Leonardtown, Maryland  
December 21, 2016