

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. 45

Award No. 45

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement when it failed to compensate Group A, Rank 1, Class B Work Equipment Operator 1. Cornejo the Group A, Rank 1, Class A rate of pay for operating an excavator on February 15 and 18, 2011 (System File C110411/08-30-611 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimant Cornejo shall be compensated the difference in pay between the lower Group, A, Rank 1, Class B rate he received and the higher Group A, Rank 1, Class A rate for sixteen (16) hours.

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 1, 3, 16 and Appendix A by failing to pay the Claimant the appropriate rate.

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

The facts are not disputed. It is the application of the Agreement Rules to the facts on which the Parties do not agree.

The Claimant, J. Cornejo (Claimant or Cornejo), is a Group A, Rank 1, Class B Work Equipment Operator. On February 15 and 18, 2011, for 16 hours, he operated an excavator at 80th Avenue and 35th Street, Rock Island District. The dispute turns on the classification of the excavator that he operated under the Agreement. BMW claims Cornejo operated an excavator while Metra claims he operated a mini-excavator or compact excavator. The classification difference affects the Claimant's hourly rate of pay.

On April 11, 2011, BMW submitted a claim on Cornejo's behalf asserting Metra violated Rule 16 because the Claimant was not compensated for operating the excavator which BMW argued is classified as a Class A machine pursuant to Rule 16. For this reason, BMW argued that the Claimant was entitled to a higher rate of pay pursuant to Appendix A.

On May 12, 2011, Metra responded that the equipment Cornejo operated on February 15 and 18, 2011 was a mini-excavator equivalent to a skid steer loader with backhoe capabilities.

On June 24, 2011, BMW appealed to the next level asserting further that no mini-excavators are classified as Class B equipment while excavators are classified as Class A equipment pursuant to Rule 3.

On August 3, 2011, Metra responded that the distinction between Class A and Class B equipment is based on whether the equipment is heavy duty or light duty. Metra argued that, as a compact excavator, the machine was akin to farm-type backhoe rather than a heavy duty backhoe or bulldozer and so, would come under the light duty category Class B, not the heavy duty category Class A.

On March 2, 2012, the claim was conferenced without resolution and BMW progressed the claim to resolution before this Board.

Each Party interprets the term **excavator** to suit their respective interpretative conception of the Agreement language.

BMWE maintains a mini-excavator is an excavator pursuant to Rule 3. Therefore, it is Class A equipment.

Metra maintains a mini-excavator, or compact excavator, is light duty equipment. Therefore, it is Class B equipment.

When agreement language is disputed as unclear or ambiguous, the first rule of construction for the Board to apply requires a determination of the intent of Parties when the agreement language was negotiated. Neither Party presented evidence during the on property handling on the Parties' intent with regard to Rule 3 during negotiations. Moreover, neither Party argued that the disputed word, **excavator**, was unclear nor ambiguous. Therefore, there is no evidence and no need to determine the Parties' intent with regard to the meaning of the word **excavator**.

Another rule of construction for the Board to apply requires a determination of the meaning of a term based on related language found in the agreement. In this regard, Rule 3, Note 1, provides that machines not listed, which would cover the mini-excavator in this case, should be included and shall be considered to be in the appropriate Rank and Class as though they were listed. However, no further interpretive guidance is provided as regards the appropriate Rank and Class of a mini-excavator. Therefore, this Note 1 language provides no guidance on the classification of the mini-excavator.

Note 1 also provides that for machines subsequently introduced into service, the Rank and Class and the rates of pay for these new machines shall be agreed in accordance with Rule 26.

Rule 26 describes a bargaining process, ending in arbitration, regarding: changes in rates of pay for new positions; changes in work methods; and expansion of duties and responsibilities of supervisory employees. There is no evidence that the Rule 26 processes were used by the Parties to determine the appropriate Rank and Class of a mini-excavator.

Each Party argued that the meaning of the disputed term, **excavator**, as applied to the mini-excavator operated by the Claimant was clear and unambiguous. Yet, they do not agree on the appropriate classification of the equipment.

An appropriate resolution of the dispute may be found in the rule of construction that contract terms should be given their plain meaning, most often, the meaning found in simple, established dictionary definitions. The Board turns to two sources for a dictionary definition of **excavator**. One source is traditional and the source other online.

The *Macmillan Dictionary* defines excavator as "a large machine for digging holes in the ground."

Dictionary.com defines excavator as "a power-driven machine for digging, moving, or transporting loose gravel, sand or soil."

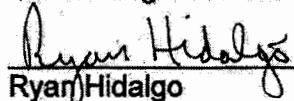
The Board finds that applying either definition to the mini-excavator, which the Claimant operated, leads to the conclusion that the equipment is an **excavator** as that term is used in Rule 3. It must follow then, pursuant to Rule 3, 16 and Appendix A, the Claimant is entitled to the Work Equipment Operator, Group A, Rank 1, Class A rate of pay for 16 hours work on February 15 and 18, 2011.

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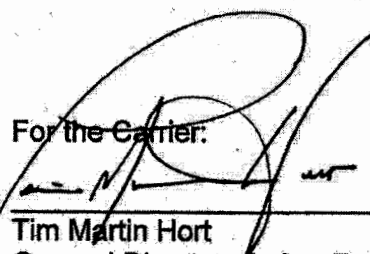
AWARD

The claim is sustained. The Claimant must receive Equipment Operator, Group A, Rank 1, Class A rate of pay for his 16 hours' work on February 15 and 18, 2011.

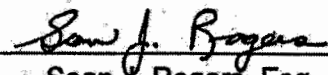
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