

PUBLIC LAW BOARD 5564

In the Matter of Arbitration between:

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

and

**NORTHEAST ILLINOIS REGIONAL COMMUTER
RAILROAD CORPORATION**

Case No. 49

Award No. 49

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement on November 5 and 6, 2011 when it assigned junior employee M. Mailey to perform overtime service in connection with constructing rafters for a new shanty near 14th Street instead of senior employee A. Moore (System File C 111230/05-21-624 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Moore shall be compensated twenty-one (21) hours overtime at his respective rate 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 18(k) by allowing a junior employee, Marshand Mailey, to work overtime hours when a senior employee, Anthony L. Moore, was available and not called to overtime service.

The facts are not disputed. The dispute turns on each Parties' interpretation of Agreement Rule 18(k).

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

On December 9, 2011, BMWWE submitted a claim on behalf of Moore, seniority date July 30, 1999, asserting that Metra violated Agreement Rule 18(k) when it allowed Mailey, seniority date August 31, 1999, to work 21-hours overtime constructing rafters for a new Trainmen's shanty and then tearing down the old shed at 14th Street on November 5 and 6, 2011.

On February 3, 2012, Metra responded that there was no violation of Rule 18(k) because the overtime required was after the regular work week and was properly offered to the junior employee who had been working on the project. Metra asserted this was the accepted practice and the 21-hours overtime claim was excessive. Metra denied the claim.

On March 23, 2012, BMWWE appealed the claim reiterating its position that Mailey's overtime assignment violated Rule 18(k). BMWWE presented evidence that Mailey was working on window installation the week of October 31, 2011 at 59th Street Station and not on the 14th Street shanty project.

On May 16, 2012, Metra responded to the appeal asserting that Mailey performed the 14th Street shanty construction during his regular hours while the Claimant did not participate in the project during his regular workweek. For this reason and in accordance with Rule 18, Metra argued that Mailey, who performed the work during assigned hours, was properly used to perform overtime service which flowed from the project. In support of its position, Metra cited Appendix O questions and answer 8. which states,

8. In paragraph 15 of Side Letter No. 8, there are times when an unassigned machine operator operates a machine all week. If the machine is needed Saturday on an overtime basis who is called?

Ans. The machine operator who has been operating the machine all week.

Metra argued, citing question 14, as well, that continuity of work supersedes seniority. Therefore, Metra concluded that Mailey "was properly used to perform the overtime work which flowed from the project."

On October 12, 2012, the claim was conferenced without resolution and BMWWE progressed the claim for resolution before this Board.

Relevant and material to this claim, Rule 18(k) states:

RULE 18. OVERTIME.

* * *

(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.

* * *

BMWWE has the burden to prove the elements of its claim.

In its March 23, 2012 appeal of Metra's initial denial of the claim, BMWWE asserted that Mailey had not continuously worked on the 14th Street shanty project because Carrier Cantenary Gang 1 reports showed that Mailey was installing windows at 59th Street Station. However, Metra's May 16, 2012 response states that the payroll labor reports failed to properly detail that Mailey work on the shanty project on October 31 and November 1, 2011. Metra stated as well,

the shanty project was progressing well enough by the end of November 1, 2011 that Mr. Mailey from Cantenary Gang 1 and Mr. Ringo from Cantenary Gang 2 were returned to their regularly assigned gangs for the remainder of the regular workweek, specifically Wednesday, Thursday and Friday November 2 to 4, 2011.

BMWE asserted that the Carrier's evidence, as regards Mailey's work for the week of October 31, 2011, fails to establish his overtime service on November 5 and 6, 2011 was continuous as required by Rule 18 because he did not work on the shanty project on November 2 through 4, 2011. BMWE reasons that since Mailey did not work continuously, Monday through Friday, on the 14th Street shanty, then Rule 18's seniority requirement is not superseded.

The Board agrees. It is undisputed that Mailey's work was not continuous, but interrupted by three days while working on window installation at the 59th Street Station. These facts establish Mailey had a 3-day break-in-service from the 14th Street shanty project such that his weekend overtime service work did not flow from the project as the Carrier argues. Simply stated, it is a fact that Mailey's work on the 14th Street shanty was not continuous. Under these facts, there was no continuity of work and the Carrier's obligation to comply with Rule 18 reset by Mailey's break in service.

Under the unique facts of this dispute, the Board find that the plain, clear and unambiguous language of Rule 18 requires that the 14th Street shanty overtime service must be assigned to "the senior available qualified employees in the rank involved . . . if they so desire."

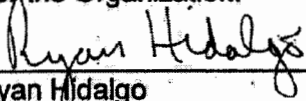
The record establishes, and it is undisputed, that the senior qualified employee in the rank involved would have been Moore. It is also not disputed that Mailey was compensated for 21-hours overtime working on the shanty project on November 5 and 6, 2011 and the Board finds that is the measure of Moore's loss as a consequence of Metra's violation of his seniority rights.

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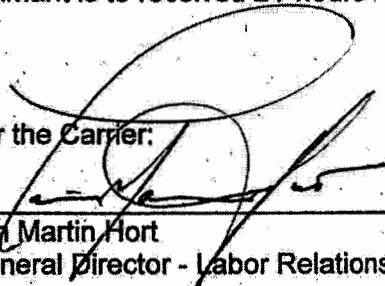
Based on the record developed by the Parties and for the reasons discussed above, BMW's claim is sustained. The Claimant is to receive 21-hours of overtime pay.

For the Organization:



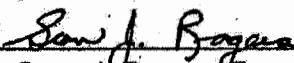
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For the Carrier:



Tim Martin Hort
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Neutral Member:



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