

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. 52

Award No. 52

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement when it assigned Track Subdepartment employees G. Gallo, M. Rangel, A. Palacios, D. Gavina and E. Andrade instead of Bridge and Building (B&B) - Water Service Subdepartment employees T. Reyes, D. Petrie, V. Calderon, Jr., S. Alexander and J. Rodriguez to rebuild and repair a culvert in the vicinity of Mile Post 27.5 at Hanover Park, Illinois on June 18, 2011 (System File C-30-11-060-13M/08-30-617 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimants T. Reyes, D. Petrie, V. Calderon, Jr., S. Alexander and J. Rodriguez shall each be compensated ten (10) overtime hours at their respective 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 BMW's claim that Metra violated the Parties' Agreement Rules 1, 2, 3, 4, 5, 18 and Appendix O, Section 7, by assigning a Track Subdepartment (Track) crew instead of a Bridge and Building-Water Service Subdepartment (B&B) crew to culvert rip-rap work in the Schaumburg flood area, MP 27.5, Hanover Park, Illinois, on June 18, 2011.

Parties do not dispute the facts but disagree on the interpretation and application of the Agreement Rules to the facts.

The on property handling of BMW's claim was as follows:

On August 26, 2011, BMW submitted a claim on behalf of the above-named B&B employees asserting the Metra violated the Agreement when it assigned a Crew to assist the Franklin Park B&B Crew and associated Crane Operator in rebuilding and repairing a culvert near MP 27.5, Hanover Park, Illinois. The culvert had been washed out by recent flooding.

BMW's claim asserts the work included "using shovels to prepare for installation of the jersey barriers, setting timbers for the retaining wall, and leveling of rip-rap installed by a crane assisting with the work." BMW said that the Track employees worked 10 hours each. BMW argued that these Track employees held no B&B seniority and the work that they performed was B&B work. As a result, the adjacent Western Avenue and Fox Lake B&B employees were denied the work which their seniority on a separate roster entitled them to perform.

On September 21, 2011, Metra denied the claim asserting the placing rip-rap with the American Crane was Track Department work.

On November 14, 2011, BMW appealed the initial denial. BMW asserted that culvert work belongs to B&B based on Rule 2 and 3. Specifically, based on Rule 3, BMW argued that the Claimants maintain seniority within B&B and their seniority and the scope rule reserved this culvert work to the Claimants.

On November 30, 2011, Metra responded to BMW's appeal confirming the Carrier's earlier claim denial. Metra maintained that the Track forces placed rip-rap along the right of way in a flood area. Citing Rule 3, Metra argued that placing rip-rap along a right of way does not involve B&B work on buildings, bridges and other structures.

The claim was conferenced on June 28, 2012 but not resolved. However, the on property handling did not end at that time.

On July 6, 2012, BMW submitted six statements from B&B employees regarding the nature of the work that was in dispute. Two statements were from B&B employees who worked on the June 18, 2011 culvert repair, rebuild and rip-rap project. These employee statements described the work of building a wall including: putting in timbers, piling and posts; laying fabric; creating walls and culverts to stem erosion with ballast and rip-rap. Four statements were from B&B employees who described other work of B&B employees repairing, rebuilding and leveling culverts with rip-rap on many other occasions. All six statements implied or asserted that laying rip-rap was customary, traditional and historically B&B work.

On July 12, 2012, Metra responded to BMW's employee statements with statements from the B&B Supervisor and Roadmaster where the disputed culvert work was performed. The B&B Supervisor stated that,

The B&B Department would typically do this work if it was around a culvert or if a crib wall was built to hold the embankment. The claimed work involved neither of these two situations.

The Roadmaster stated that,

placement of riprap is regularly assigned to track forces. It would not be typical for B&B employees assigned to Water Service Subdepartment to distribute riprap along the roadway.

The Carrier denied the claim in its entirety and BMW progressed the claim to resolution before this Board.

The applicable work rules cited by BMW in its *ex parte* submission provide:

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.

* * *

RULE 2. SUBDEPARTMENTS - SENIORITY GROUPS AND RANKS.

(a) The seniority rights of employees will be confined to subdepartments and groups as provided hereinafter and shall extend throughout the Carrier's entire suburban passenger operation, which on the effective date of this Agreement is comprised of the territory from Chicago to Joliet (excluding the Heritage Corridor but including the CWI Branch), Chicago to Big Timber, Chicago to Fox Lake, Chicago to University Park (including the South Chicago Branch and the Blue Island Branch), Chicago to Manhattan between MP 8 at 74th Street and MP 40.9, and the yards at Western Avenue, Fox Lake, Elgin and Antioch. The rank sequence of employees within the various groups shall be as shown below, the lowest number designating the highest rank in the group.

* * *

Bridge and Building - Water Service Subdepartment

Group A - Bridge and Building

Rank 1 - Foremen

Rank 2 - Assistant Foremen

Rank 3 - Mechanics
Rank 4 - Assistant Mechanics

* * *

RULE 3. CLASSIFICATION OF WORK. The denominations within the various subdepartments listed below set forth the type of work that shall be performed by employees assigned to each respective subdepartment and group and the primary duties of the employees assigned to classifications within each group.

* * *

Bridge and Building - Water Service Subdepartment

Group A - Bridge and Building - Employees assigned to perform the work involved in the construction, maintenance, repair and dismantling of all buildings, bridges, and other structures, facilities, and appurtenances related thereto, regardless of material content, except the work in connection therewith that shall be performed by Group B - Water Service employees in the performance of their work.

DISCUSSION AND FINDINGS

BMWE maintains that this is a straightforward case in which the Carrier violated the Agreement by not assigning the appropriate B&B Crew to culvert rebuilding and repairing work, but instead assigning Track employees from a separate seniority roster. For this violation of the Agreement, BMWE requested remedy is 10 hours overtime pay for each Claimants.

The Carrier disputes BMWE's interpretation and application of the facts to the Agreement Rules asserting the Scope Rule does not provide B&B employees an exclusive right to the work claimed and that the work is normally assigned to B&B forces. The Carrier maintains the Agreement language fails to establish that a particular class of employees has exclusive right to place rip-rap along the right of way. The Carrier also argues the Claimants are not entitled to 50 hours of overtime pay pursuant to Rule 18(k) or Appendix O, Section 7, because the disputed overtime was not continuous with a

regular work period and was not planned or emergency overtime.

The facts establish that initially the Franklin Park B&B Crew with a Crane Operator were rebuilding the MP 27.5 area that had been washed out, then the Carrier added Track forces to the project.

Pursuant to the Agreement B&B employees and the Track employees hold seniority on separate rosters. These separate seniority rosters evince the intent of the parties to follow the generally accepted practice that such distinct employee groups perform separate functions. A line of cases supports this interpretation that separate seniority rosters are intended to establish boundaries between job categories so as to limit work traditionally performed by a Subdepartment, in this dispute the B&B and Track Subdepartments. The Parties' contractual intent must be squared with the reality of specific work projects. In this regard, there may be overlapping of the Parties' intended job category boundaries arising from separate seniority rosters and Scope Rules in the real world of work projects.

Award 22072 interprets the Parties' intent reflected in separate seniority rosters, scope rules and the resulting job category boundaries stating that, if the Carrier adds forces to a work project, then it must follow the established seniority system. Yet, the Carrier assigned Track forces to assist B&B forces to lay rip-rap arising from the repair and rebuilding of the washed out culvert at MP 27.5. Two B&B employees who worked on the culvert project described the details of the work in a manner supporting the conclusion that the work was traditional, historic and customary B&B work. Four other B&B employees described similar rip-rapping by B&B forces in the past.

Based on the unique facts developed in this record the Board concludes the B&B Subdepartment Claimants were entitled to the work performed by the Track Subdepartment employees.

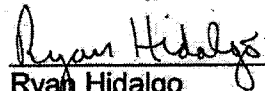
There was no on property dispute between the Parties concerning the number of hours, 10 hours per Claimant, claimed as remedy. The Carrier did and does refute that overtime compensation is the appropriate pay rate. Numerous Awards establish that the Claimants are entitled to the rate of pay they would have otherwise received but for the Carrier's violation of the agreement. For these reasons, the Board concludes that the

Claimants are entitled to 10 hours of pay at the appropriate rate.

AWARD

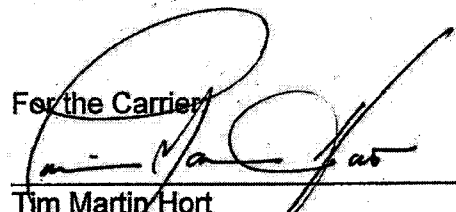
BMW's claim is sustained.

For the Organization:



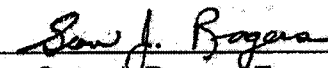
Ryan Hidalgo
Public Law Board Advocate
BMW-IBT

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