

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. 47

Award No. 47

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement on March 7, 8, 9, 10 and 11, 2011 when it assigned junior employees J. Salazar, J. Johnston, H. Fallad, J. Jauregui, E. Andrade, Jr. and J. Guerrero to perform overtime service in connection with platform construction work at 35th Street on the Rock Island District instead of senior employees K. Kots, D. Butler, G. Ponce, K. Rainey and I. Cornejo (System File C110501/08-21-613 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimants K. Kots, D. Butler, G. Ponce, K. Rainey and I. Cornejo shall each be compensated for 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 and 3 in the assignment of overtime at the 35th Street Station project (35th Street).

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

The facts are not disputed. The application of the Agreement Rules to the facts are disputed.

The Claimants include: K. Kots, D. R. Butler, G. E. Ponce, K. W. Rainey and I. Cornejo. These employees compose what BMW asserts is the Senior Gang headquartered at Blue Island (127th Street). Other involved employees include: J. Salazar, J. Johnson, H. Fallad, J. Jose Jaurequi, E. Eduardo Amdreade, Jr. And J. Guerrero. These employees compose what BMW asserts is the Junior Gang headquartered at 47th Street which was established after the Claimants' Gang. Both Capital Gangs are assigned to the Rock Island District. The dispute involves Metra's work assignments of these two Capital Gangs at 35th Street.

Both Capital Gangs worked planned overtime on the weekend of March 5 and 6, 2011 at 35th Street. From March 7 through 11, 2011, the Senior Gang was assigned work on the 80th Avenue Station platform project (80th Avenue) while the Junior Gang continued to work on 35th Street.

On May 3, 2011, BMW submitted a claim asserting that the Carrier allowed the Junior Gang to work planned overtime 2 hours per day, from 3:30 p.m. to 5:30 p.m. in violation of the Agreement Rules 1, 2 and 3 because the overtime work should have been offered to the Senior Gang.

On June 6, 2011, Metra denied the claim responding that "the capital gang working their regular hours during the week are [sic] entitled to any overtime, during the week."

BMW appealed the claim denial asserting that pursuant to Rule 18(k) and Appendix O, Section 18, since both Gangs were assigned to the Rock Island District, then the Agreement seniority rules require that the Senior Gang be assigned the overtime work.

On August 10, 2011, Metra denied the claim appeal again asserting that there is no Agreement language giving the Claimants, or their Capital Gang, preference to work on a specific project. Moreover, Metra asserted that Gangs do have seniority based on when the Gang was established. Metra argued that the employees assigned to the 35th Street project, the Junior Gang, clearly had preference for overtime on that project, just as the Claimants, the Senior Gang, had preference for overtime on their project. Metra also argued that the Agreement does not provide that employees working on a project must step aside to surrender the overtime work to a Gang working on a different project.

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

The Agreement Rules provide, in material part, as follows:

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.

* * *

**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 Board finds that certain undisputed facts are important to the analysis of the claim. First, the facts establish that the employees working at 35th Street from March 7 through 11, 2011, which BMWWE calls the Junior Gang, were assigned overtime as a *continuation* of their regular day of work. Next, it is also an undisputed fact that the Claimants' Gang, which BMWWE calls the Senior Gang, was working at another location, 80th Avenue. Finally, the undisputed facts establish that no Capital Gang was regularly assigned to 35th Street within the meaning of Appendix O, Section 18. Based on these simple facts, the Board finds that, Appendix O, Section 18 is not applicable to the specific, unique facts of the overtime assignment from March 7 through 11, 2011 on 35th Street.

The plain and express language of Rule 18 gives preference for overtime service, continuous with, that is before or after the regular work period, to the senior available qualified employees, if they so desire. This clear Agreement language does not define or establish seniority by Gangs, but only by individual employee. For this reason, the Board finds that Rule 18 is not applicable to the specific, unique facts of the overtime assignment from March 7 through 11, 2011 on 35th Street as well.

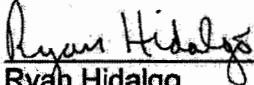
The Board concludes that since no Agreement Rule constrains Metra's assignment of continuous overtime to the Gang working from March 7 through 11, 2011 on the 35th Street project, then BMWWE's claim must be denied.

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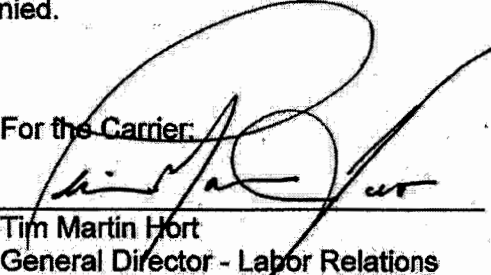
The claim is denied.

For the Organization:



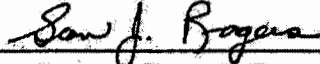
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BMW-IBT

For the Carrier:



Tim Martin Hort
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Neutral Member:



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