

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. 57
Award No. 57

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 members of the 47th Street Gang, instead of the Claimants, to perform overtime service on the Southwest Service District on July 5, 2012 (System File A120831/08-20645 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimants D. Linstrot, G. Ponce and R. Knor shall each be compensated for four (4) 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 on July 5, 2012, Metra violated the Parties' Agreement Appendix O and the March 28, 2006 Memorandum of Understanding (MOU) when assigning work on the Palos Park Station (Palos Park), Southwest Service District (SWS).

BMWE asserts that the Carrier improperly assigned the 47th Street Maintenance Bridge and Buildings gang (47th Street B&B Gang), Rock Island District, to assist the SWS Bridge and Buildings Crew (SWS B&B Crew), SWS District, to remove and replace crosswalks for track work at Palos Park.

The Parties' on property handling of the claim did not fully develop the facts and, consequently, the record is *arguably* elliptical.

However, the Board was able to discern the following material, undisputed and un rebutted facts:

On July 5, 2012, the SWS B&B Crew assigned to the Palos Park crosswalk and track work required assistance. The Carrier dispatched the 47th Street B&B Gang to assist the SWS B&B Crew. The work took 12 hours apparently resulting in 8 hours straight time and 4 hours overtime compensation for the assigned SWS B&B Crew and the assisting 47th Street B&B Gang. At the time, the Claimants Linstrot, Ponce and Knor, members of the Blue Island Gang No.1, Rock Island District, were working on the Blue Island turntable which was a long-term, demanding and protracted rebuilding project.

However, Carrier records establish that on July 5, 2012, Claimant Ponce was on vacation leave. For this reason alone, the Board finds that his claim is without merit and is denied.

On August 31, 2012, BMWE's presented the claim asserting that Metra violated Agreement Appendix O, Section 5, and the March 28, 2006 MOU by assigning the 47th Street Gang instead of the Claimants' Blue Island Gang No. 1 to assist the SWS B&B Crew. The Claimants maintained that the work was exclusively reserved to the Rock Island B&B Gang No.1 by the Agreement and the MOU. As remedy, BMWE requested that the Claimants be compensated 4 hours each at the overtime rate.

On October 26, 2012, the Carrier denied the claim responding that the work to assist the SWS B&B Crew was assigned to the 47th Street Gang because the Rock Island B&B Gang No. 1 was working on the long-term Blue Island turntable rebuild. The Carrier provided evidence that Ponce was on vacation pay that day, and so, the Carrier argued,

he should be excluded from the claim. The Carrier argued Appendix O, Section 5 allows leeway for it to make work assignments quickly so as to resume safe and efficient operations and that Appendix O, Section 8 allows for work to be performed on either district without penalty.

On December 7, 2012, BMWWE appealed Metra's claim denial reiterating that the work belonged to the Claimants.

On January 15, 2012, Metra denied BMWWE's appeal. Metra argued that Appendix O concerns the allocation of overtime and does not control the work assignments in this dispute which was performed during both gangs' assigned hours. The Carrier also argued that the March 28, 2006 MOU describes an exception in the event of emergency which the Carrier maintained existed as regards the Palos Park work.

On August 16, 2013, the claim was conferenced without resolution. Thereafter, the dispute was docketed with this Board for adjudication.

The applicable provisions of the Agreement, Appendix O, and the March 28, 2006 MOU state:

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 5. Rock Island - B&B: This district is broken down into three areas: LaSalle Street to M.P. 0.4 is normally assigned to the LaSalle Street Crew; M.P. 0.4 to Joliet is normally assigned to Blue Island Gang No. 1; and C.W.I.

and the Heritage Corridor are normally assigned to Blue Island Gang No. 2. These gangs handle all B&B work on the district, including planned and emergency overtime. Any such overtime, either planned or emergency, is offered to the gang normally assigned to that area. Seniority within individual gangs is always honored.

- Any overtime help for LaSalle Street Gang would first go to Blue Island Gang 1 and then to Blue Island Gang 2.
- Any overtime help for Blue Island Gang 1 would first go to Blue Island Gang 2 and then to LaSalle Street Gang.
- Any overtime help for Blue Island Gang 2 would first go to Blue Island Gang 1 and then to LaSalle Street Gang.

* * *

Section 8. Southwest Service - B&B: One gang handles all work, including all overtime, on this district. If additional assistance is needed, Blue Island Gangs 1 & 2 will be called in seniority order. If additional employees are still required, other Rock Island B&B employees will be called in seniority order.

* * *

The March 28, 2006 MOU:

This is in regard to the application of the General Agreement between the Northeast Illinois Regional Commuter Railroad Corporation and the Brotherhood of Maintenance of Way Employees, particularly in regard to the assignment of district gangs. It is understood that such gangs will be established for the purpose of performing work on a particular district and will be assigned to perform work only within that district, except in the event of an emergency. The delineation of districts as set forth in Appendix "O" will govern in the application of this letter of understanding. In other words, the system will be divided into four districts: Rock Island, Metra Electric, Milwaukee, and Southwest Service.

In other than emergency situations, arrangements may be made for temporary cross-district assignment of gangs by agreement between the parties.

* * *

DISCUSSION AND FINDINGS

The facts established in the on property handling are that the Carrier assigned the 47th Street B&B Gang, on a regular assignment with straight time compensation and during the Gang's regular work hours, to assist the SWS B&B Crew to remove and to replace crosswalks for track work at Palos Park, SWS District. The Blue Island Gang No. 1 was not assigned to assist because it was working on the Blue Island turntable. The July 5, 2012 overtime work at Palos Park was time worked continuous with the Gang's regular 8 hour tour. Therefore, the Gang's assignment was a continuation of a work assignment and not an overtime work assignment within the meaning of Appendix O, Section 5. For this reason, the Board finds that the facts do not support a finding of a violation of the Agreement.

Moreover, BMW's claim does not describe facts supporting a violation of the March 28, 2006 MOU. This is because the clear intent of the March 28, 2006 MOU concerns the application of the Agreement to the assignment of district gangs for the purpose of performing work only within the gang's district, except in the event of an emergency. The 47th Street B&B Gang, Rock Island District, was working a cross-district assignment on the SWS District. The MOU constrains Metra's assignment power of a particular district gang to work assignments only within the gang's district, except in an emergency or with BMW's agreement for cross-district assignments. Since the 47th Street B&B Gang was working cross-district and not on the Rock Island District, then the Blue Island Gang No.1's alleged right to the claimed work based on the MOU was not affected. The Board finds that the facts do not support a finding of a violation of the March 28, 2006 MOU.

The Board finds that BMW has not proven the essential elements of a violation of the Agreement or the March 28, 2006 MOU. For this reason, there is no need to address the Carrier's defenses regarding the emergency exception or splitting claims.

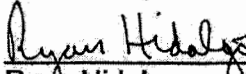
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For the reasons discussed above, the Board finds that Claimants Linstrot and Knor's claims are denied. Claimant Ponce's claim is denied as being without merit because he was on vacation pay on July 5, 2012.

AWARD

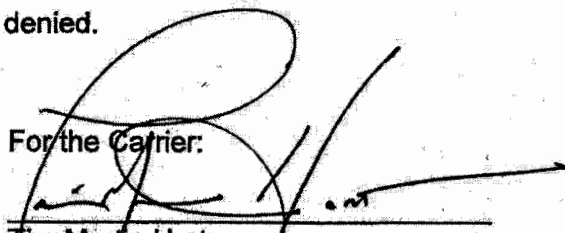
BMW's claim is denied.

For the Organization:



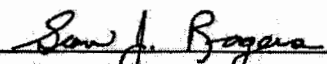
Ryan Hidalgo
Public Law Board Advocate
BMW-IBT

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