

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. 59

Award No. 59

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier's decision to disqualify employee J. Rodriguez from his position as a foreman and remove his foreman seniority from the foreman roster effective September 12, 2012 was unjust, unwarranted and in violation of the Agreement (System File 121002/08-07-648 NRC).
2. The claim referenced in Part 1 above, as presented under date of October 2, 2012 (Employees' Exhibit A-1) to Chief Engineering Officer J. Lorenzini, shall be allowed as presented because it was not disallowed by Chief Engineering Officer Lorenzini in accordance with Rule 33.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimant J. Rodriguez shall be allowed the difference in pay between his current position and his prior position as foreman from September 12, 2012 and continuing forward until he is reinstated to the foreman position and his name returned to the foreman roster.

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 (BMWWE or Organization) and the Northeast Illinois Regional Commuter Railroad Corporation (Metra or Carrier) (collectively the Parties). The dispute arises out of BMWWE's claim that Metra violated the Parties' Agreement Rules 4(a), 7(b), 8(b) and (d), and 32(a) and (b) when it disqualified the Claimant J. Rodriguez from his position as Track Foreman.

The record of the on-property handling reveals the following undisputed facts:

On September 12, 2012, the Carrier notified the Claimant that he had been disqualified from his Track Foreman position for his inability to pass the April 24, 2012 qualifying examination. He held the position since October 14, 2011. BMWWE asserted that the disqualification constituted discipline without investigation or hearing.

On October 2, 2012, BMWWE submitted a claim to the Chief Engineering Officer on behalf of Rodriguez challenging the Carrier's disqualification of Rodriguez as a Track Foreman based on alleged violations of Agreement Rules 4, 7, 8 and 32.

On February 4, 2013, having received no Carrier response to the claim, BMWWE appealed to Patrick J. Ward, the next level Carrier Official in the claim process. BMWWE's appeal reiterated the claim and requested as remedy that the Claimant receive the difference in pay between his current position and his Track Foreman position from September 12, 2012 until his reinstatement to Track Foreman.

On March 20, 2013, the Carrier denied the appeal. The Carrier asserted that since the Claimant failed to pass the Track Foreman qualification exam, then his disqualification from the position was not a disciplinary action.

The claim was conferenced on May 8, 2013 and August 16, 2013, but not resolved.

On December 5, 2013, the claim was conferenced again by telephone. BMWWE asserted in writing that because there was no Carrier response to the original claim, then the Agreement Rule 33's time limits required that the claim be allowed. The claim was not resolved. Thereafter, the dispute was docketed with this Board for adjudication.

The applicable work rules and policies provide:

RULE 33. TIME LIMIT ON CLAIMS AND GRIEVANCES. (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of the notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

DISCUSSION AND FINDINGS

In support of its contention that the claim must be sustained, BMWWE described a procedural violation of Rule 33 regarding the Carrier's failure to respond to the claim at all. The Carrier's alleged procedural violation must be addressed by the Board as a threshold matter.

The undisputed and unchallenged facts establish that the Carrier failed respond to BMWWE's October 2, 2012 claim within 60 days of the date the claim was submitted. The record establishes that the Carrier did not respond to the claim at all until after BMWWE's February 4, 2013 appeal to Patrick Ward.

Rule 33(a) provides that,

Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. ***If not so notified, the claim or grievance shall be allowed as presented***, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances. (Emphasis added).

The Board finds, applying the plain, clear and unambiguous Rule 33(a) language to the facts, that BMW's claim is allowed without precedent or waiver of Carrier contentions regarding similar claims. The Claimant is entitled to be made whole with the reimbursement of the difference in pay between his current position and his prior position as Track Foreman from September 12, 2012 until his reinstatement to the Track Foreman position to include the appropriate correction of his seniority.

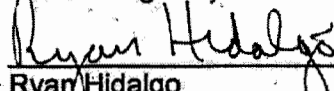
Consistent with NRAB principles, since the Board has found that the Carrier committed a Rule 33 procedural violation which resolves the dispute, then the Board need not consider the claim merits.

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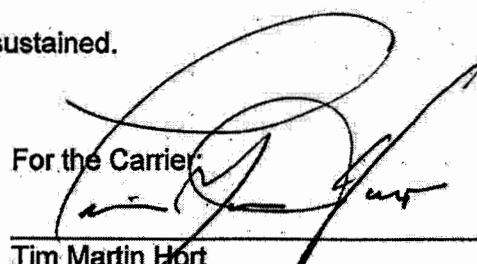
BMW's claim is sustained.

For the Organization:



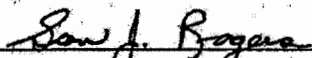
Ryan Hidalgo
Public Law Board Advocate
BMW-IBT

For the Carrier:



Tim Martin Hort
General Director - Labor Relations
Metra

Neutral Member:



Sean J. Rogers, Esq.
Sean J. Rogers & Associates, LLC
Leonardtown, Maryland
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