

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. 60
Award No. 60

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 instead of Bridge and Building (B&B) - Water Service Subdepartment employees W. Garibay, C. Otero, M. Vasquez, H. Fallad, S. Kmiec, D. Petrie, S. Alexander, A. Mieszanek, W. Dehn, M. Arnold and G. Farrington to inspect various bridges and culverts on the Milwaukee North and Milwaukee West lines on April 17, 18 and 19, 2013 (System File C-13-M-0020-1108-21-655 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Garibay shall be compensated eight (8) overtime hours and thirteen and one-half (13.5) double time hours at his respective rate of pay; Claimants C. Otero, M. Vasquez, H. Fallad, S. Kmiec, D. Petrie, S. Alexander, A. Mieszanek and W. Dehn shall be compensated eight (8) overtime hours and thirteen (13) double time hours at their respective rates of pay; Claimant M. Arnold shall be compensated seven and one-half (7.5) overtime hours and thirteen (13) double time hours at his respective rate of pay; and Claimant G. Farrington shall be compensated seven (7) overtime hours and thirteen (13) double time hours 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 Rules 1, 2 and 3 when on April 17, 18 and 19, 2013, following heavy rainfall and flooding, the Carrier assigned Track Section Crews to inspect bridges and culverts on the Milwaukee North and Milwaukee West Lines. BMWE asserts that the Carrier failed to notify the Claimants of this available overtime and double time work in violation of the Agreement Rules.

On June 11, 2013, BMWE submitted the claim asserting that Metra violated the Agreement Rules 1, 2 and 3 as described above. BMWE's claim asserts that, rather than use the Bridge and Building (B&B) Sub-department Claimants for the track inspection, instead Metra utilized Track Sections Crews thereby denying the Claimants the overtime and double time opportunity without notice. BMWE asserted that the Claimants lost out on a total of 86.5 hours overtime pay and 143.5 hours double time pay.

On August 22, 2013, Metra denied the claim stating that "the work described in this claim customarily belongs to the Track Inspectors, who inspect tracks for any problems and defects."

On September 30, 2013, BMWE appealed the denial asserting that Metra did not dispute that it failed to notify the claimants of the available overtime work on April 17, 18 and 19, 2013. BMWE argued that the inspection and maintenance of bridges and culverts "clearly flows to employees within the Bridge and Building (B&B) Sub-department under Rule 3."

On November 18, 2013, Metra denied the appeal asserting that BMWWE failed to provide the amount of grieved overtime and failed to state if the Claimants were ready or available for overtime. Metra also asserted that the Claimants were not called for the overtime because they were not entitled to the work. Metra argued there was no basis for BMWWE's claim and that the work was not exclusive to the B&B Sub-department and so, BMWWE failed to prove an Agreement violation. Metra noted that the Northeastern Illinois region experienced heavy rainfall and flooding over a short time which prompted the Carrier's emergency response to inspect the bridges and culverts.

On April 23, 2014, the claim was conferenced without resolution. However, the claim processing did not end. On May 5, 2014, BMWWE submitted 3 signed statements from B&B Sub-department employees stating that they had worked to clean and clear numerous bridges and culverts in the past.

The claim was not resolved. Thereafter, the dispute was docketed with this Board for adjudication.

The applicable work rules and policies 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.

* * *

Track Subdepartment

Group A

Rank 1 - Track Inspectors
Rank 2 - Foremen
Rank 3 - Assistant Foremen
Rank 4 - Clean-up Foremen
Rank 5 - Trackmen

* * *

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.

* * *

Track Subdepartment

Group A - Employees assigned to perform the work involved in the construction, maintenance, repair and dismantling of track and roadway, and any other related work generally recognized as being Maintenance of Way work in the Track Subdepartment.

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

The facts are not disputed. Following an extraordinary rainfall and local flooding, which affected Metra's Milwaukee North and Milwaukee West Lines, the Carrier assigned Track Section Crews to patrol and inspect bridges and culverts on the right of way on April 17, 18 and 19, 2013. The assigned crews' resulting compensation included premium pay, both overtime and double time.

There is no evidence that the Carrier declared an emergency at the time. However, the on property handling amply establishes the need for urgency and the presence of serious safety concerns prompting the inspection project based on the extraordinary rainfall and local flooding.

BMWE's initial June 11, 2013 claim asserted that the Carrier failed to notify the Claimants of the available overtime and double time work resulting in a violation of the

Agreement.

The Carrier's August 5, 2013 claim denial asserted the work customarily belongs to Track Inspectors, which is supported by Agreement Rule 3, which states that Track Sub-department employees,

perform the work involved in the construction, maintenance, repair and dismantling of track and roadway, and any other related work generally recognized as being Maintenance of Way work in the Track Subdepartment.

BMW's ensuing September 30, 2013 claim appeal did not add new information to the record or describe the proof necessary to sustain a finding of an Agreement Rule violation.

The Board needs mention that BMW's May 5, 2014 letter includes three statements from B&B Sub-department employees who state that they cleaned brush, drift and river buildup from bridges and culverts challenging Metra's assertion that the claimed work customarily belongs to Track Inspectors. The Board finds that these statements are anecdotal evidence at best and are not probative or material regarding the April 17, 18 and 19, 2013 claimed work.

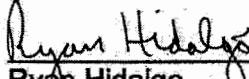
Based on the on property record, the Board finds that BMW has not established violations of the Agreement Rules 1, 2 and 3. For this reason, the claim is denied.

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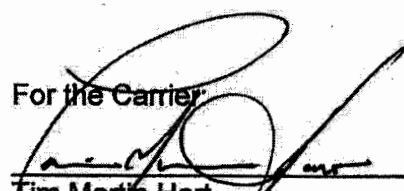
BMW's claim is denied.

For the Organization:



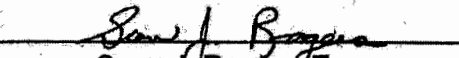
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For the Carrier:



Tim Martin Hort
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Neutral Member:



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