

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. 61
Award No. 61

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement when it instructed employes on the Rock Island District to cease performing overtime snow removal work on February 27, 2013 for the purpose of absorbing overtime (System File C130227/08-21-652 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimants D. Linstrot, G. Ponce, D. Galligan, S. Engel, R. VanMeter, J. T. Smith, J. Johnston, F. Kmiec, J. Ramirez, S. Espinosa, J. H. Smith, T. Morris, J. Martinez, M. Cornejo, L. Jones, J. Pulido, J. Zuniga, J. Rodriguez, J. Alvarez, D. Bryant, J. Alcantar, R. Ballard, V. Gonzalez, J. Esparza, H. Munoz, R. Garcia, M. Fernandez, R. Almanza, A. Ramirez, J. Calderon, H. Ewing, O. Villagomez, T. Wisniewski, T. Woody, A. Perez, J. Duran, Cunigan, M. Diaz, J. Demonte, J. Lara, J. Gayton, F. Sanchez, N. Fulbright, M. Zavala, M. Szalko, F. Ochoa, L. Draine, R. Guzman, Zavala, J. Lopez, T. Moreno, J. Guerrero, D. Matthews, J. Solis, H. Quiroga, M. Rangel, J. Campos and K. Prince shall each now be compensated two and one-half (2.5) hours at their respective double time 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 (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 Rule 18(a), (c) and (l).

On February 27, 2013, the 58 Claimants from the Engineering Department, Rock Island District, were called to overtime service for snow and ice removal as the result of a winter weather emergency. The Claimants worked overtime into their regular 7:00 a.m. to 3:30 p.m. shifts. Pursuant to Agreement Rule 18, they received double time pay for the time they worked into their shift. At 1:00 p.m., the Carrier released the Claimants. The Claimants were paid for the remainder of their shifts with 2.5 hours straight time pay.

On April 23, 2013, BMWWE submitted a claim on behalf of the 58 Claimants asserting Metra violated Agreement Rule 18 (a), (c) and (l) by releasing the Claimants to absorb over overtime. As remedy, BMWWE requested that the Claimants be compensated for the 2.5 hours release time at the double time pay. BMWWE asserted that only Rock Island District employees on double time were released early to absorb overtime.

On June 21, 2013, Metra denied the claim asserting that the winter weather emergency had ended 1:00 p.m. Metra asserted that straight time pay for the remainder of the Claimants' shift was consistent with Agreement Rule 18 and past practice.

On August 9, 2013, BMWWE appealed the claim denial. BMWWE's appeal reiterated the claim that: the Claimants should have been allowed to finish their shifts at the double time pay; other employees had remained on duty for their full shifts with double time pay; and the Carrier released the Claimants to absorb overtime.

On September 27, 2013, Metra responded stating that: BMWWE had not met its burden to prove an Agreement Rule violation; BMWWE did not provide evidence to contradict the earlier claim denial; and the claim for 2.5 hours double time pay was excessive because the Claimants were paid 2.5 hours straight time pay for the remainder of their shifts.

On August 13, 2014, the claim was conferenced without resolution.

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

The applicable work rules and policies provide:

RULE 18. OVERTIME. (a) Time worked following and continuous with the regular eight (8) hour work period shall be computed on the actual minute basis and paid for at the lime and one-half rates, with double time computed on the actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of the employee's regular shift.

* * *

(c) For time worked in excess of sixteen (16) hours following the beginning of the employee's regular starting time, the double-time rate will apply until the employee is released for at least ten (10) hours.

* * *

(l) Employees will not be required to suspend work during their regularly assigned work period for the purpose of absorbing overtime.

DISCUSSION AND FINDINGS

For the Board to sustain BMWWE's claim, the Organization must prove that on February 27, 2013, Metra released the Claimants with the intent to absorb double time pay. In this regard, the record developed on property establishes that BMWWE asserted that only

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Rock Island District employees were released before the end of their shifts. In response, Metra asserted that: the emergency weather event had ended; other districts had heavier snow accumulations than the Rock Island District delaying the affected employees' release; the Claimants were properly paid through the end of their shifts; and the early release process has been past practice for more than 20 years.

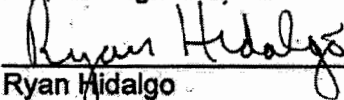
The burden of proof rests on BMWWE. It is a well established and an axiomatic principle reflected in NRAB awards that the Organization must not only cite rules which the Carrier allegedly violated, but also must present the proof necessary to sustain a Board finding that the rule was violated. In this dispute, BMWWE's allegations of fact alone do not constitute probative, material proof to support a finding that Metra violated Agreement Rule 18 (a), (c) and (i).

For these reasons, the Board finds that BMWWE has failed to prove in the on property record that the Carrier released the Claimants to absorb overtime. Therefore, Board finds the claim must be denied.

AWARD

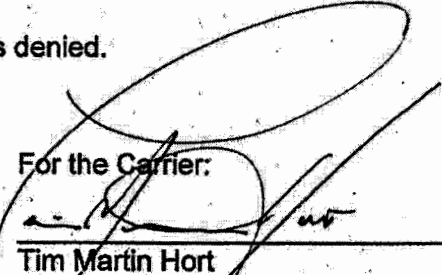
BMW's claim is denied.

For the Organization:



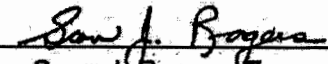
Ryan Hidalgo
Public Law Board Advocate
BMW-IBT

For the Carrier:



Tim Martin Hort
General Director - Labor Relations
Metra

Neutral Member:



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December 21, 2016