

## **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. 72

Award No. 72

### **THE ORGANIZATION'S STATEMENT OF THE CLAIM**

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement when it failed to make a vehicle available for Mr. A. Hagan to utilize to obtain a commercial driver's license (CDL) (System File C 16 07 06/08-19-698 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Hagan shall be reimbursed for the cost of obtaining a rental vehicle to perform a CDL test which amounted to one hundred seventy-five dollars (\$175.00).

### **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 Metra's refusal to reimburse Metra employee A. Hagan (Claimant) for a rental truck to take the Indiana commercial drivers license (CDL) test. Metra required that Claimant have a CDL for a maintenance of way position.

The facts are not in dispute. The Parties dispute the application of Appendix Q and Side Letter No. 7, as amended effective November 1, 1999, to the facts.

On or about July 1, 2016, Claimant requested a Metra vehicle to take his CDL driving test in Indiana where he was a resident. Metra denied Claimant's request stating the Carrier's fleet insurance coverages did not extend outside Illinois. Claimant rented a vehicle to take the CDL driving test in Indiana.

On July 6, 2016, Claimant requested rental reimbursement, but his supervisor denied reimbursement.

On September 2, 2016, BMW E grieved on Claimant's behalf contending that Metra violated Appendix Q, Section 4 by failing to reimburse Claimant. BMW E asserted that the Metra was required to pay for Claimant's expense to obtain a vehicle for the CDL test in the amount of \$175.00.

On October 28, 2016, Metra denied the Claim. Metra asserted that it provides employees with vehicles for practice and over-the-road CDL testing within the state of Illinois. Metra stated that it was not required to reimburse employees for costs of obtaining a CDL to an employee who elected to reside outside of Illinois.

On December 21, 2016, BMW E appealed the Claim denial asserting a violation of Appendix Q Section 4.

On February 17, 2017, Metra denied BMW E's appeal. Metra argued that BMW E failed to support its contention that the Carrier is required to provide employees who reside outside Illinois a Carrier vehicle or to reimburse employees for a test vehicle rental. Metra also stated that there is no evidence of a past practice regarding the matter.

On April 26, 2017, the Parties conferenced the Claim but did not resolve the dispute.

The dispute is properly before this Board for resolution.

## **DISCUSSION AND FINDINGS**

This dispute requires a review, interpretation and application of Appendix Q and Side Letter No. 7, as amended effective November 1, 1999 to the facts.

Side Letter No. 7, as amended effective November 1, 1999 states in the pertinent part relied on by Metra to deny the Claim:

In connection with ongoing discussions relative to the Engineering Department's requirements in complying with the State of Illinois Commercial Drivers License (CDL) program, which became fully implemented on April 1, 1992, the following understanding was reached which meets service needs as anticipated by the Engineering Department and at the same time resolves the Organization's requests for a solution to its membership's concerns . . .

Appendix Q states in pertinent part:

Section 2. Employees who do not have the required CDL at the time that they exercise seniority onto one of the Track or Bridge and Building Gang positions, as listed above, will have thirty (30) calendar days from the date they first perform service on such position to obtain the required license, provided that employees who possess CDLs are assigned at the time to the other positions on the gang which require such a license. If an employee fails to obtain the CDL within the thirty (30) day period, he will be disqualified from the position, which will be readvertised in accordance with the provisions of the General Agreement of April 16, 1984, as amended.

\* \* \*

Section 4. It is understood that the Carrier will continue to provide driver and classroom training in addition to making vehicles and qualified drivers available for employees requiring practice and over-the-road testing.

NOTE: This Appendix, which was added as part of the May 1, 2004 updating and reprinting of the General Rules Agreement, replaces previous Side Letter No. 7, as amended effective November 1, 1999.

Metra's denial of Claimant's request for CDL testing vehicle and for a rental truck reimbursement for his Indiana CDL test is based on the language of Side Letter No. 7 referring to the requirement to comply "*with the State of Illinois Commercial Drivers License*

(CDL) program.” This language, Metra argues, establishes that Metra’s obligation to provide CDL test vehicles pertains only to Illinois employee-residents. Metra views an employee’s decision to reside elsewhere as a personal election which releases the Carrier from the obligation to provide a CDL test vehicle.

Metra’s reliance on the Side Letter No. 7 is flawed because Appendix Q expressly replaced the side letter on May 1, 2004.

Metra argues next that Appendix Q contains no provision addressing out-of-state CDL practices. Metra argues that if the Appendix Q drafters intended to extend Section 4 benefits to employees residing outside Illinois who seek CDLs, then such language could have easily been included in Appendix Q.

Metra interprets this contractual silence as a limitation on Section 4's requirement that Metra make vehicles available to employees for practice and over-the-road testing when they seek CDLs out-of-state.

The Board does not agree.

In the instant Claim, the language of Appendix Q, Section 4 does not limit the requirement that Metra make vehicles available to employees for over-the-road CDL testing. It is a tenet of contract construction that an exception to general language must be expressly stated. The plain and unambiguous language of Appendix Q, Section 4 identifies no exceptions to Metra’s obligation to make vehicles available to employees for over-the-road CDL testing.

However, Appendix Q, Section 4 is still subject to reasonable application. Employees are not entitled to self-help. Employees who reside out-of-state must make a specific request for a Carrier CDL testing vehicle to allow Metra to decide how to insure the vehicle or how to arrange for an insured rental.

In this dispute, Claimant acted reasonably. Claimant requested a vehicle and he was denied. He then rented a vehicle and grieved asserting a violation of Appendix Q, Section 4. He followed the well established work place requirement to suffer and grieve.

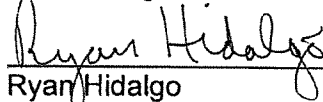
The Board finds that Claimant was entitled to a Metra vehicle to take the Indiana CDL test. Absent Metra providing a vehicle, Claimant acted reasonably when he rented a testing truck. He is now entitled to reimbursement for the rental of a CDL testing truck on presentation of a receipt to the Carrier.

For all these reasons, the Claim is sustained.


### AWARD

Claim sustained. The Carrier must reimburse the Claimant for rental of a CDL testing truck on his presentation of a rental receipt.

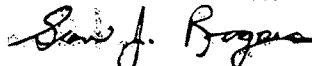
For the Organization:

  
Ryan Hidalgo  
Public Law Board Advocate  
BMW-IBT

For the Carrier:

  
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October 31, 2019