

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. 73

Award No. 73

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 and refused to assign Mr. A. Ramirez to fill an unassigned position working with Capital Gang #1 at Blue Island, Illinois on March 7, 8, 9, 10 and 11, 2016 and instead assigned junior employee J. Dempsey thereto (System File C 16 03 07/8-21-687 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Ramirez shall be compensated eight (8) hours' pay at the appropriate rate for each of the claim dates.

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 work assignment to J. Dempsey instead of A. Ramirez, Claimant, and a more senior employee.

The facts are not in dispute. The Parties dispute the application of Rule 6(c) and Rule 7(d) to the facts. In particular, the Parties dispute which rule applies to the facts.

On March 2, 2016, the Carrier attempted to contact Claimant to offer him unassigned work from March 7 through 11, 2016. The work involved pinning headers for a Capital Platform project with Capital Gang No. 1 at Blue Island, Illinois.

On March 2, 2016, Metra left a voice mail for Claimant at 9:57 a.m. regarding the unassigned work opportunity. Claimant returned Metra's call at 11:24 a.m. that day. Metra told him that the unassigned work had been filled by J. Dempsey, a less senior employee instead. Metra offered Claimant other unassigned work at Western Avenue. Claimant declined the other work.

On April 29, 2016, BMW presented this Claim on behalf of Claimant. BMW asserted that Metra violated Rule 7, *Bulletin Assignments*, when the March 7 through 11, 2016 unassigned work was given to junior employee J. Dempsey. BMW argued that Claimant returned Carrier's call promptly as he could after attending a funeral as a pallbearer. BMW also argued that Claimant should have been allowed to accept the assignment because he responded well in advance of the unassigned work start date.

On June 24, 2016, Metra denied the Claim. Metra asserted that Claimant was not available when contacted and did not return Metra's call for an hour and a half. As a result, Metra contacted the available junior employee in the interim.

On August 19, 2016, BMW appealed Metra's denial.

On October 14, 2016, Metra denied the appeal asserting that BMW failed to demonstrate a violation of Rule 7. Metra argued that it called employees to unassigned work in accordance with Rule 6(d) but Claimant was unavailable. Metra stated that neither Rule 7(c) nor Rule 6(d) required it to wait for Claimant to return the call wait before it could contact the next senior furloughed employee for the assignment.

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

This Claim is now properly before this Board for resolution.

APPLICABLE WORK RULES

Rule 6(d) Positions or vacancies of thirty (30) or less calendar days will be considered temporary and may be filled without bulletining, with preference given to the senior employees in the rank and group in which the position or vacancy occurs who may be out of work or working in a lower rank due to force reductions. If no such employee is available, the position or vacancy will be filled through the general promotion rules.

Rule 7(c) In the event no bid is received from an employee holding seniority in the rank bulletined, the senior employee of such rank who is furloughed will be recalled and assigned the position subject to the qualification requirements of paragraph (b), above. If there is no such furloughed employee, the position will be filled by employees from within the subdepartment group of the bulletined position under the general rules of promotion.

DISCUSSION AND FINDINGS

BMWE bears the burden of proof to show that Metra violated work rules when the Carrier did not offer Claimant unassigned work on March 7 through 11, 2016.

There is no question that Claimant was the more senior furloughed employee compared to J. Dempsey who was assigned the March 7 through 11, 2016 work. The facts establish that the Carrier called Claimant once to offer him the work, but as he did not answer the Carrier left a voice message, moved on and then offered the work to J. Dempsey. Metra's offer of work to J. Dempsey must have occurred shortly after the call to Claimant because within about 90 minutes, Claimant returned the Carrier's call and learned the work had been assigned to J. Dempsey.

Supported by precedent, BMWE argues the Carrier was required to make more than one call to Claimant under Rule 7(d). BMWE argues there was time between the Carrier's call on March 2, 2016 and the date the work was to begin on March 7, 2016 for the Carrier to call Claimant again.

Supported as well by the plain language of Rule 7(d), BMW E argues the rule requires that the senior employee who is furloughed “*will be recalled and assigned the position.*” (Emphasis added). BMW E argues this is mandatory language with regard to the assignment of work to the more senior furloughed employee.

However, Metra argues the work was not a bulletined assignment under Rule 7(d) but a temporary assignment under Rule 6(c). The language of Rule 6(c) is less constraining on the Carrier’s ability to assign work stating, in part, that,

preference [will be] given to the senior employees . . . who may be out of work . . . If no such employee is available, the position or vacancy will be filled through the general promotion rules. (Emphasis added).

The record established that the work was of short duration, March 7 through 11, 2016. There is no evidence in the record that the work was a bulletined assignment.

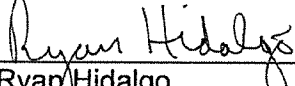
For these reasons, the Board finds that the Carrier assigned the work pursuant to Rule 6(c) providing *preference* to Claimant with the first call and, finding him unavailable, the Carrier properly offered the assignment to J. Dempsey.

For all these reasons, the Board finds the Claim is denied.

AWARD


Claim denied.

For the Organization:



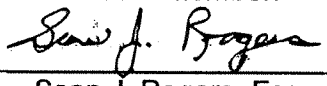
Ryan Hidalgo
Public Law Board Advocate
BMW-IBT

For the Carrier:



Danielle Gauthier
Director - Labor Relations
Metra

Neutral Member:



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