

## **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. 74

Award No. 74

### **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 compensate Mr. D. O'Brien at the Bridge and Building (B&B) foreman rate of pay while performing foreman duties on April 25, 26, 27, 28 and 29, 2016 (System File C 16 04 25/8-6-692 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. O'Brien shall now be compensated the difference in pay between B&B foreman rate [thirty dollars and fifty-four cents (\$30.54)] and the B&B mechanic rate [twenty-eight and fifty-one cents (\$28.51)] for all hours worked on April 25, 26, 27, 28 and 29, 2016.

### **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 alleged failure to compensate D. O'Brien (Claimant or O'Brien) at the foreman rate for foreman work.

The facts are not in dispute. The Parties dispute the application of Rule 16 to the facts.

Claimant has established and holds seniority in various classifications within the Carrier's Building and Bridges (B&B) Department. On April 25, 26, 27, 28 and 29, 2016, Claimant was recalled from furlough to an unassigned B&B mechanic.

BMWE's June 13, 2016 Claim alleges that he was instructed by his supervisor to perform B&B foreman duties.

During the time of the Claim, the facts establish that Claimant was compensated at the B&B mechanic rate.

BMWE asserts that under Rule 16 Claimant's appropriate rate of pay should have been the higher B&B Foreman rate.

Metra's August 10, 2016 Claim denial alleges that Claimant was under the supervision of the B&B Supervisor and that Claimant merely assisted with various tasks including filling out paperwork, timesheets and relaying his Supervisor's instructions to crew members.

On October 4, 2016, BMWE appealed Metra's Claim denial and on November 18, 2016, Metra denied the appeal.

On April 28, 2017, the Parties conferenced the Claim but did not resolve the dispute.

This Claim is now properly before this Board for resolution.

### **APPLICABLE WORK RULE**

**RULE 16. COMPOSITE SERVICE.** When an employee performs work carrying a higher rate of pay for more than four (4) hours on any day, he will receive the higher rate for the entire day; when four (4) hours or less work is performed, the higher rate will apply for actual time worked. When the

employee's regular rate is the higher one, his rate will not be reduced when he is required to perform lower-rated work for any part of the day. Nothing in this Rule will permit the regular assignment of employees to higher rated work for a half day or less to avoid payment of the higher rate for the entire day.

### **DISCUSSION AND FINDINGS**

BMWWE bears the burden of proof to show that Metra violated Rule 16 when the Carrier assigned the Claimant B&B work on April 25, 26, 27, 28 and 29, 2016.

BMWWE asserts that Claimant performed Foreman work.

Metra asserts that he did not.

Long-standing and well-established precedent requires that the Organization offer the proof necessary to sustain an alleged rule violation claimed. Precedent also holds that, in rules cases, the Organization must demonstrate all elements of the claim to establish the essential facts supporting the claim and prevail.

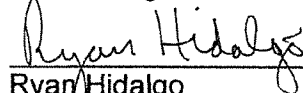
The Claim cites the rule and asserts a violation without further evidence of salient facts, including time, place and circumstances, necessary to sustain an award in BMWWE's favor.

BMWWE has advanced no proof of a rules violation necessary for the Board to sustain the Claim and the Claim is denied.


**AWARD**

Claim denied.

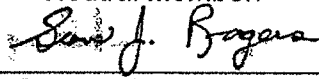
For the Organization:

  
\_\_\_\_\_  
Ryan Hidalgo  
Public Law Board Advocate  
BMWE-IBT

For the Carrier:

  
\_\_\_\_\_  
Danielle Gauthier  
Director - Labor Relations  
Metra

Neutral Member:

  
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Sean J. Rogers, Esq.  
Sean J. Rogers & Associates, LLC  
Leonardtown, Maryland  
October 31, 2019