

## **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. 76

Award No. 76

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

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement when it placed employees A. Chavez, J. Hernandez, A. Nieto and H. Diaz on positions which they were junior to Messrs. J. Ramirez and F. Ochoa on April 19, 2017 (System File C-02-17060-02-M/08-2017-8 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Ramirez and F. Ochoa shall be placed on the positions and given seniority in proper order. In addition, the Claimants shall be compensated for any wage loss associated with this violation.

### **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 failure to select J. Ramirez and F. Ochoa (Claimants) to Work Equipment Assistant Mechanic Positions. The Claimants are senior to the four employees

that the Carrier selected, A. Chavez, J. Hernandez, A. Nieto and H. Diaz (less senior employees).

The facts are undisputed. It is the application of Appendix P to the facts which the Parties dispute.

Early in 2017, the two Claimants, four less senior employees and other employees, nine employees in all, took a Wonderlic mechanic's assessment test to qualify for bulletined Work Equipment Assistant Mechanic Positions 17-0115A, 17-0116A, 17-0117A and another work equipment assistant mechanic position not bulletined.

Wonderlic is a third party skills testing/training provider. The Parties agree that the Carrier's selection process for the 4 positions is governed by Agreement Appendix P. Specifically, it is the application of Appendix P, Section 3 to the facts on which they disagree.

On April 10, 2017, Senior Human Resources Generalist S. Bates received the nine employees' Wonderlic test results. The test results were displayed in a chart entitled *Work Equipment Mechanic Test Results Summary (Wonderlic Summary)*. (Organization Exhibit (Ox) A-5, Attachment no. 1). The *Wonderlic Summary* did not report a pass/fail grade for the employees. (See: Appendix P, Section 3, below).

On April 10, 2017, Bates reviewed the *Wonderlic Summary*. In an email to Marko Neskovic, Bates. Metra Engineering Maintenance Work Equipment Supervisor, arrayed the nine candidate-employees' scores in a panel as follows:

Hilarion Diaz - Passed  
Angel Chavez - Passed  
Jose Hernandez - Passed  
Adolfo Nieto - Passed  
Andy Flores - Borderline  
Jose Ramirez - Borderline  
Felipe Ochoa - Did Not Pass  
Angel Fragoso - Did Not Pass  
Jose Carbajal - Did Not Pass  
(Carrier Exhibit (Cx) A. P. 28)

Bates determined that the Claimant Ochoa "*Did Not Pass*" and Claimant Ramirez was "*Borderline*" on the Wonderlic Work Equipment Mechanic's assessment test. As a result, Claimants were found not qualified for the work equipment assistant mechanic positions and passed over for selection.

BMWED Vice General Chairman G. Loveland contacted Bates to discuss Claimants' test results. BMWED states that Bates told Loveland that there was no pass/fail score associated with the Claimants' tests and that the test score results were open to interpretation. Loveland responded that the Wonderlic test results should be the official grade in determining if Claimants passed or failed and that the test score determination should be made by Wonderlic alone. Bates responded that in his review of the test results he determined that Claimants failed and the four less senior employees passed. For this reason, the Carrier determined to select the less senior employee from the panel for the work equipment assistant mechanic positions.

On June 8, 2017, BMWED filed a Claim on behalf of the Claimants asserting that the Carrier violated the Claimants' seniority rights and Agreement Appendix P, specifically Section 3, by assigning the junior employees to the four work equipment assistant mechanic positions.

On July 25, 2017, the Carrier denied BMWED's Claim asserting that although Claimants were more senior than the four employees selected, the Claimants did not pass all qualifying exams pursuant to Appendix P.

On September 19, 2017, appealed the Carrier's Claim denial.

On February 15, 2017, the Carrier denied the appeal.

On January 11, 2018, the Claim was conferenced by the Parties but not resolved. The Claim is now properly before this Board for resolution.

### **APPLICABLE WORK RULE**

**APPENDIX P**  
**WORK EQUIPMENT REPAIRERS**

Notwithstanding any rules of the April 16, 1984 General Rules Agreement to the contrary, the following terms and conditions shall apply to Work Equipment Repairers:

**Section 1.** Concurrent with the changes adopted in connection with Rules 2 and 3 of the General Rules Agreement relating to Work Equipment Repairers, all Group B, Rank 1 (Work Equipment Mechanic) seniority dates on the current seniority roster will be changed to Group B, Rank 2 seniority dates and all Group B, Rank 2 (Assistant Work Equipment Mechanic) seniority dates will be changed to Group B, Rank 3 seniority dates.

**Section 2.** Work Equipment Assistant Mechanic positions advertised and not filled by employees with Group B, Rank 3 seniority shall be filled by senior, qualified employees based on Work Equipment Subdepartment Group A, Rank 2 seniority. If there are no qualified bidders, other employees covered by the General Agreement will be given preference over other applicants.

**Section 3.** (a) Individuals assigned pursuant to Section 2, above, must have passed the Mechanic's assessment, which is comprised of the Employee Aptitude Survey No. 2, Employee Aptitude Survey No. 5, Industrial Reading Test, and Hogan Personality Inventory. The results of the Assessment will be confidential. Therefore, only a pass/fail will be reported. Qualification indicators must be completed prior to assignment. The usual Rule 8(d) thirty (30) calendar days qualification period to apply effective with the date of the assignment.

**DISCUSSION AND FINDINGS**

BMWE bears the burden of proof to show that Metra violated Appendix P when the Carrier failed to select the Claimants for the work equipment assistant mechanic positions. For the reasons stated below, the Board finds that BMWE has met its burden.

Appendix P reflects the intent of the Parties to ensure, as much as possible, that the selections for the instant work equipment assistant mechanics positions are objective. Appendix P achieves the Parties' intent by basing selections on an initial pass/fail skills test score on a mechanic's assessment test followed by a final selection decision based on seniority.

Simply stated, Appendix P reflects the Parties' intent that, among otherwise equal candidates for a position, the most senior will be selected.

The clear, express and unambiguous language of Appendix P **requires** that "only a pass/fail will be reported" for the results of the mechanic's assessment skill test. The intent of the Parties' is thwarted without a pass/fail test score to establish that there are otherwise equal skills between and among a panel of candidates.

In this regard, despite this language, the Carrier violated Appendix P twice.

First, the Carrier failed to ensure that the *Wonderlic Summary* reported a pass/fail score for the employees who took the mechanic's assessment test. The Carrier's failure to require a pass/fail reporting from Wonderlic **clearly** violates the Appendix P requirement that "only a pass/fail will be reported." The Carrier's failure to have Wonderlic report a pass/fail score undermines the intent of the Parties to ensure an objective selection process. For this reason alone, the Carrier violated the Agreement and this selection process is invalid.

Second, Bates' reviewing and interpretation of the *Wonderlic Summary*, in the absence of a third party pass/fail report followed and compounded by his extra-contractual creation of a "*borderline*" score for Claimant Ramirez and employee Flores, violated Appendix P, Section 3. Plainly, Appendix P, Section 3, does not provide for a "*borderline*" score.

Therefore, Bates' reviewing and interpreting of the *Wonderlic Summary*, in the absence of a third party two-factor pass/fail scoring, injected his subjective judgment into the selection process. Moreover, his creation of the third scoring factor of "*borderline*" violated the Appendix P, Section 3, requirement that "only a pass/fail will be reported." For these reasons alone, as well, the Carrier violated the Agreement and this selection process for the work equipment assistant mechanic position is invalid.

For this Appendix P violation, BMW's requested remedy is that the Claimants be

placed on the work equipment assistant mechanic position in proper seniority order and be made whole with compensation for all hours worked in the positions as the junior employees. However, this remedy might result in unqualified candidates who had not passed the Wonderlic Work Equipment Assistant Mechanic test being placed on a position when they had not demonstrated the skills for this position. This remedy would thwart the Parties' intent of having an objective selection of senior qualified candidates.

BMWE's requested remedy does not cure the Carrier's breach of the Agreement because, without a pass/fail scoring for each candidate, the qualified senior candidates have not been identified for selection pursuant to Appendix P process. If the selection process is invalid for the Complainants, then it is invalid for the less senior and other employees on the panel as well.

The Carrier, the Claimants and the other employees on the panel are entitled to the two-step, objective selection process that they negotiated as described in Appendix P.

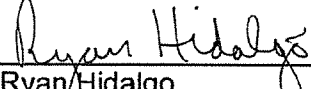
The Board finds that the selection process was invalidated by subjective scoring being injected into the selection process in violation of the Parties' agreement. Therefore, the appropriate remedy is that the Carrier must rerun the selection process based on third party pass/fail score reports for each candidate from Wonderlic.

The Claim is sustained. The Carrier must obtain a Wonderlic pass/fail score report for the panel of candidate-employees and then rerun the selection process based on the pass/fail scores and the candidate-employees' seniority.


**AWARD**

Claim sustained with the remedy described above.

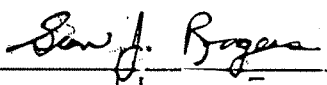
For the Organization:

  
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For the Carrier:

  
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Metra

Neutral Member:

  
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J.I

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October 31, 2019