

PUBLIC LAW BOARD NO. 5564

**Case No. /Award No. 93
Carrier File No.: 8-2018-19
Organization File No.: 18 05 13
Claimant: G. Ponce, *et al.***

**NORTHEAST ILLINOIS REGIONAL)
COMMUTER RAILROAD CORPORATION)
)
-and-)
)
**BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION- IBT)
RAIL CONFERENCE)**
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STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned members of a Capital Platform Gang not listed in Appendix O to reinstall crosswalks on the Beverly Sub following the Tie Gang and build a new commuter crosswalk at the 111th Street Station on May 13 and June 2, 2018, instead of assigning Messrs. G. Ponce, R. Van Meter, R. Knor, A Chorak, Foreman Linstrot and J. Jauregui who were assigned to the Blue Island Gang Nos. 1 and 2 on the Rock Island District (System File 18 05 13/8-2018-19 NRC).

2. As a consequence of the violation referred to in Part 1 above, Claimants G. Ponce, R. Van Meter, R. Knor, A Chorak, Foreman Linstrot and J. Jauregui shall now ‘... be compensated twelve (12) hours at their assigned time and on (sic) half rate of pay on May 13, 2018, and ten (10) hours at the time their assigned one half rate of pay for June 2, 2018 which totals \$1094.28 for B&B Foreman Ponce, \$1023.00 for B&B Mech Driver Vanmeter (sic), \$1003.20 for B&B Mech Chorak, \$547.20 for B&B Mech Knor, \$596.88 for B&B Foreman Linstrot, and \$558.00 for B&B Mech Driver Jauregui (sic).’ (Employees’ Exhibit ‘A-1’)”

FACTS:

The Carrier assigned members of a Capital Platform Gang to reinstall crosswalks on the Beverly Sub following the tie gang on May 13, 2018. On June 2, 2018, it assigned those members to build new commuter crosswalks at 111th Street Station.

Rule 18 of the parties' Agreement addresses overtime, stating as follows in pertinent part:

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 time 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.

* * *

(d) Instances where the employee reports to work in overtime service other than provided for in paragraphs (a) or (b), above, the twenty-four hour period for purposes of applying paragraph (c), above, shall commence at the time the employee reports for such service. Each successive twenty-four hour period will be computed in a like manner until the employee is released from duty in accordance with paragraph (c), above.

* * *

(k) When overtime service is required of part of a gang continuous with, before, or after the regular work period, the senior available qualified employees in the rank involved shall have preference to such overtime if they so desire.

APPENDIX O

OVERTIME

AGREEMENT between the Northeast Illinois Regional Commuter Railroad Corporation and the Brotherhood of Maintenance of Way Employees

IT IS AGREED:

In the application of Rule 17. Call Rule and Rule 18. Overtime of the April 16, 1984 General Rules Agreement, as amended, the following procedures will govern the assignment of overtime, whether planned or emergency.

* * *

Section 5. Rock Island - B&B: This district is broken down into three areas: LaSalle Street to M.P. 0.4 is normally assigned to the LaSalle Street Crew; M. P. 0.4 to Joliet is normally assigned to Blue Island Gang No. 1; and C.W.I. and the Heritage Corridor are normally assigned to Blue Island Gang No. 2. These gangs handle all B&B work on the district, including planned and emergency overtime. Any such overtime, either planned or emergency, is offered to the gang normally assigned to that area. Seniority within individual gangs is always honored.

- Any overtime help for LaSalle Street Gang would first go to Blue Island Gang 1 and then to Blue Island Gang 2.
- Any overtime help for Blue Island Gang 1 would first for to (sic) Blue Island Gang 2 and then to LaSalle Street Gang.
- Any overtime help for Blue Island Gang 2 would first go to Blue Island Gang 1 and then to LaSalle Street Gang.

* * *

Section 17. When all criteria covered under items one through sixteen have been met, then assigned capital gang employees followed by mobile system gang employees working on that particular district are called next in seniority order.

(i) When all such qualified employees have been called on the Rock Island District, then qualified employees from the SWS are called, followed by qualified employees from the MED, and then those from the MWD, all in seniority order.

CARRIER POSITION:

Beginning Monday, May 7, 2018 through Friday, May 11, 2018, members of the Carrier's Blue Island Capital B&B Gangs #1 and #2 were assigned to perform capital construction/rehabilitation work at the 111th Street Station. The work at the station included trenching, installing back headers, leveling out the ground,

removing spoils within the platform, installing deadman ties and their rods and plates, back headers, removing and reinstalling crosswalks, etc.

On Saturday, May 12, 2018, members of the Capital B&B Gangs #1 and #2 continued their work at the 111th Street Station and performed ten (10) hours of overtime service. On Sunday, May 13, 2018, three (3) members of the Capital B&B Gang #1 and #2, employees David Butler, Derek O'Brien, and Nicholas Deneen, performed overtime service at the 111th Street Station. The overtime work on Sunday, May 13th consisted of removing and reinstalling commuter crosswalks at the station. Continuing on Monday, May 29, 2018, through Friday, June 1, 2018, the members of the Capital B&B Gangs #1 and #2 were again assigned to work at the 111th Street Station to continue with the renovation of the station. The work at the station included additional trenching, digging and filling, flagging and assisting contractors with the laying asphalt for the parking lot, disposing of crosswalk material, pinning headers, installing tactile panels, etc.

On Saturday, June 2, 2018, 6 of the members of the Capital B&B Gangs 1 and 2, employees J. Salazar, N. Hernandez, H. Tapia, D. Butler, N. Deneen, and R. McFarlin Jr., performed overtime service at the 111th Street Station. The overtime work on Saturday, June 2 consisted of building new commuter crosswalks at the station.

The work in dispute was part of a three-month platform and crosswalk capital rehabilitation program at the 111th Street Station, and commuter crosswalks had to be removed and reinstalled several times as the capital work progressed. Chief Engineering Officer B. Marcheschi stated that B&B maintenance forces are assigned the work only after the capital forces have completed their work at the location.

As the Carrier sees it, the Capital B&B Gang had preference to overtime which was in connection with their regular assignment, that being the capital rehabilitation work at the 111th Street Station. The Carrier also stated that Appendix O does not determine Claimants' right to the disputed overtime as they were not "part of a gang" for purposes of the disputed overtime since they had no connection to the work and each was assigned to a different gang and project. Finally, the Carrier noted there was no proven loss of work opportunity because Claimants Van Meter, Ponce, Knor, Chorak, and Jauregui worked overtime in connection with their own assignments on May 13 and June 2, 2018.

It is undisputed in the record that the work at the station was capital work, not maintenance work. It is also undisputed that Claimants were not members of either B&B Capital Gang #1 or #2, and they had not performed any service at the 111th Street Station during their regular work weeks preceding the overtime in question.

ORGANIZATION POSITION:

This work occurred in the area normally assigned to Blue Island Gang 1 and Blue Island Gang 2 on the Rock Island District. The Blue Island gangs (i.e., the Claimants) perform overtime work in support of capital rail, tie, welding and surfacing projects. Claimants were ready, willing and able to perform this work.

The Carrier assigned capital employees not listed in Appendix O to perform overtime work which historically and contractually accrues to them.

In the Organization's view, the Carrier's failure to assign Claimants to the disputed work was a violation of Section 5 of Appendix O of the Agreement, which provides that all B&B work, including planned overtime, will be handled by gangs assigned to areas within a specific district. In addition, Section 5 of Appendix O further provides that any overtime help would first go to members of Blue Island Gang 1, then to Blue Island Gang 2. In this case, Claimants were all regularly assigned to B&B positions on Blue Island Gang 1 and Blue Island Gang 2 headquartered on the Rock Island District. Therefore, their regular assignment on Blue Island Gangs 1 and 2 entitled them to all overtime work opportunities occurring within the designated area of the Rock Island District.

DECISION:

The Carrier maintains the contested work was capital work because crosswalks had to be taken down and rebuilt multiple times for an on-going construction project. The work in question was connected to the assignment of regular work during this period, it asserts. It points to a series of work orders that demonstrate that the workers who were assigned the overtime in question had been working at the station during the preceding week. This establishes that the work they did on the weekend on overtime was a continuation of the work they had been doing during the week. However, there was no regular work period immediately before or after the overtime assignment in question.

We are in accord with Referee Kennis in PLB 5564 Award 41, who explained:

Appendix O, Section 20 controls 'planned or emergency' overtime, and the overtime worked by the junior on-duty mechanic on April 27th was neither 'planned' nor 'emergency' in nature. Instead, it was overtime worked continuous with his regular assignment, and as the Carrier correctly notes, there is nothing in either cited contract provision which would have required the Carrier to send him home and bring Claimant in.

In Award 57, Referee Rogers described it this way:

The July 5, 2012 overtime work at Palos Park was time worked continuous with the Gang's regular 8 hour tour. Therefore, the Gang's assignment was a continuation of a work assignment and not an overtime work assignment within the meaning of Appendix O, Section 5. For this reason, the Board finds that the facts do not support a finding of a violation of the Agreement...

It is clear in this case that the work in question was not continuous with a regular work period. The continuity was broken. Though there may be instances where prior experience and/or training is required and can be demonstrated by prior non-contiguous work periods, such facts are not present here.

Appendix O is very explicit. Naming three areas within the Rock Island District, it sets forth the normal assignments of LaSalle Street Crew, Blue Island Gang 1 and Blue Island Gang 2. It then flatly states: "These gangs handle all B&B work on the district, including planned and emergency overtime. Any such overtime, either planned or emergency, is offered to the gang normally assigned to that area."

Section 17 addresses the question of capital gang employees, permitting them to be assigned to Rock Island B&B work once the three Rock Island gangs have been exhausted; after this, the mobile system employees are called.

These provisions make it clear that the Carrier is not free to call up capital gang employees until all the criteria of Sections 1 through 16 have been met. We are not persuaded that the Agreement imposes a requirement that Claimants be "part of a gang" as contended by the Carrier. Rule 18 (k) addresses seniority within rank, and the reference to "part of a gang" does not articulate a pre-condition to the assignment of overtime, but rather a circumstance under which rank is considered.

This enforcement of the Agreement is consistent with the Referee's recognition of the clear and unambiguous nature of the language at issue in PLB Awards 53, 55, 58, and 69. As explained by Referee Rogers in Award 53:

The plain, clear and unambiguous language of Appendix O, Section 5 provides that the Claimant's Rock Island B&B Gang No. 1 is to handle all B&B work on the Rock Island District, including planned and emergency overtime.

In that case, the Carrier had argued that Claimants were already assigned to turntable work and therefore unavailable for overtime elsewhere. This argument was rejected.

The Agreement does not allow for a circumstance where the Rock Island gangs are skipped so that capital employees can stay on the job. To the contrary, it explicitly requires that the Rock Island gangs be accorded preference over capital gang employees for all work on the district. The fact that Claimants worked overtime elsewhere on the days in question does not absolve the Carrier from providing a remedy for the contract violation involved.

AWARD:

The claim is sustained in full. Claimants G. Ponce, R. Van Meter, R. Knor, A. Chorak, Foreman Linstrot and J. Jauregui shall be compensated for 22 hours at time-and-a-half of their assigned rates.

ORDER:

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimants be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.

July 13, 2023



Patricia T. Bittel, Neutral Member



John Schlismann, Employe Member



Sylwia Dutka, Carrier Member