

PUBLIC LAW BOARD NO. 5564

**Case No. /Award No. 94
Carrier File No.: 8-2018-22
Organization File No.: 18 07 01
Claimant: P. Rodriguez**

**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 on July 1, 2018, when it assigned junior employe L. Nichols to perform overtime service in connection with maintenance gang work at the M.U. Shop at 14th Street instead of senior employe P. Rodriguez (System File 18 07 01/8-2018-22 NRC).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant P. Rodriguez shall now be compensated thirteen and one-half (13.5) overtime hours at the time and one-half rate for a Bridge and Building (B&B) Mechanic totaling six hundred thirty-seven dollars and seven cents (\$637.07).”**

FACTS

On July 1, 2018, the Carrier assigned B&B Subdepartment employe L. Nichols, to perform overtime service in connection with assisting a B&B Maintenance Gang working overtime at the M.U. Shop at 14th Street. The record establishes that Nichols was junior to Claimant, a mechanic, in seniority. Nichols expended a total of

thirteen and one-half (13.5) hours' overtime in the performance of this contested work.

Applicable provisions of the parties' Agreement state as follows in pertinent part:

RULE 2. SUBDEPARTMENTS - SENIORITY GROUPS AND RANKS. (a) The seniority rights of employees will be confined to subdepartments and groups as provided hereinafter and shall extend throughout the Carrier's entire suburban passenger operation, which on the effective date of this Agreement is comprised of the territory from Chicago to Joliet (excluding the Heritage Corridor but including the CWI Branch), Chicago to Big Timber, Chicago to Fox Lake, Chicago to University Park (including the South Chicago Branch and the Blue Island Branch), Chicago to Manhattan between MP 8 at 74th street and MP 40.9, and the yards at Western Avenue, Fox Lake, Elgin and Antioch. The rank sequence of employees within the various groups shall be as shown below, the lowest number designating the highest rank in the group.

* * *

Bridge and Building - Water Service Subdepartment

Groups A - Bridge and Building

Rank 1 - Foremen

Rank 2 - Assistant Foremen

Rank 3 - Mechanics

Rank 4 - Assistant Mechanics

* * *

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.

* * *

(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.

CARRIER POSITION:

The Carrier contends that the work was properly assigned to junior employee L. Nichols based upon his Rank 1 – Foremen position being superior to Claimant’s Rank 3 – Mechanics position. It contends Rule 18 does not apply because it addresses continued work. Since the team working the prior eight hours declined, the Carrier concludes that Rule 18 is inapposite. It argues it is not restricted from calling a foreman if preferred. It admits it is not known whether they needed someone with leadership experience, but maintains that in any event there was no applicable restriction.

ORGANIZATION POSITION:

In the Organization’s view, the Carrier’s argument has no basis. The Carrier does not even assert, let alone provide evidence that a Rank 1 – Foremen was required to assist B&B Maintenance at the M.U. Shop at 14th Street. Absent such an assertion, let alone evidence of its truth, the Carrier cannot establish a defense based upon rank alone.

Rule 18 clearly and unambiguously provides that the senior, qualified, available employee in the rank involved shall have preference to overtime work if they so desire. The Organization has established and it remains unrefuted that Claimant was the senior, qualified and available employee in the rank involved, and therefore had preference for the contested work.

DECISION:

Since the team working the prior eight hours declined, the work was not continuous and Rule 18(k) does not apply. Instead, Appendix O controls the assignment. That provision makes no reference to rank, but designates which gang will be offered the work.

It is clear that when the parties intended rank to be a consideration, they so specified. Likewise, then they used the term “gang,” this indicates an intent that the application be by gang without regard to rank. Rule 2 specified that “the seniority rights of employees will be confined to subdepartments and groups as provided hereinafter....” This provision clarifies that rank within groups has no bearing.

The Carrier had no right under the Agreement to take rank into consideration under the circumstances of this case.

AWARD:

The claim is sustained in full. Claimant Rodriguez shall be compensated thirteen and one-half hours at time and a half of his then applicable rate.

ORDER:

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant 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