

PUBLIC LAW BOARD NO. 5564

**Case No. /Award No. 99
Carrier File No.: 8-2019-5
Organization File No.: 19 01 04 (001)
Claimant: R Snisko**

**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 allowed junior unassigned employe R. Carroll to work as a Bridge and Building (B&B) Mechanic on the Galewood Gang #3, at the exclusion of the senior employe R. Snisko on January 4, 5, 6, 7, 11, 12, 13, 14, 25, 26, 27, 28, 29, 30, February 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14 and 15, 2019 [System File 19 01 04 (001)/8-2019- 5 NRC].**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant R. Snisko shall now be compensated ‘... two hundred sixteen (216) hours at the regular rate of pay, ninety-three (93) hours at the time and one-half rate, and twenty-eight (28) hours at the double time rate of pay for a B&B Mechanic which totals \$12945.79.’ (Emphasis in original) (Employees’ Exhibit ‘A-1’).”**

FACTS:

Claimant and furloughed employes Martinez, Sheehan, Clubb and Carroll were called for overtime snow removal service on January 1, 2019 at Blue Island. Following the service on January 1, they were informed that if their service was required, they would be contacted. The Carrier contacted junior employe R. Carroll

who subsequently reported for duty as a Group A, Rank 3 Bridge and Building (B&B) Mechanic at Galewood beginning January 2, 2019. The Carrier did not contact the senior Claimant until January 18, 2019.

Following contact, Claimant worked on the Galewood #3 Gang as a Group A, Rank 3 B&B Mechanic from January 18 through 23, 2019, after which time the Carrier reduced the number of mechanics at Galewood. Claimant was advised via phone that he was to return to furlough status after Wednesday, January 23, 2019.

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 9. FORCE REDUCTIONS.

* * *

(c) When reducing the number of employees in a gang, or at the point where the reduction is to be made, seniority shall govern, first

furloughing the junior men in each rank to be reduced. When entire gangs are abolished the foregoing procedure will not be followed.

(d) An employee affected by force reduction or abolishment of a gang shall, within in a period of ten (10) calendar days from the date of his displacement, exercise his seniority rights over any junior employee. An employee failing to comply with the above will forfeit his rights to place himself in any rank in which he holds seniority, except by successfully bidding on and being assigned to a bulletined new position or vacancy, or by resuming active service through recall to duty in accordance with the provisions of paragraph (g), below.

(e) If a furloughed or displaced employee elects to displace a junior employee, he must notify the appropriate official of the Carrier before the change is made, giving the name of the employee to be displaced and the date he will report. This procedure can, if necessary, be handled by telephone in order that the employee to be displaced can be given as much advance notice as possible by the Carrier, but not less than one workday. The Carrier will give full cooperation in assisting employees to determine and exercise their displacement rights. All employee notifications shall be confirmed in writing.

(f) Employees temporarily out of the service or serving in lower ranks will be given the opportunity to return to the service or to such higher rank in the service in which they have established seniority, in the order of their seniority, to fill temporary vacancies or positions. * * *

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.

* * *

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 19. During snow emergencies, it often becomes necessary to call track, B&B, water service, welders, and machine operators out to clean switches, plow snow, and clean platforms. This is usually done on either a district or system wide basis. All personnel on any one district are called out at the same time, but when more than one district is called out, they may be asked to report at different times depending on snow conditions. The normal procedure is for B&B forces to clean platforms and for track forces to first clean switches. Then once all switch work is complete, track forces assist B&B personnel in cleaning platforms. At times, a snow emergency can arise in one particular location when there are no forces working. On those occasions, the section or gang normally assigned to that territory as outlined in Items 1 through 15 of this memorandum is called out to handle the problem in accordance with appropriate call-out procedures. If additional forces are required, any Track Inspectors working on that particular district are then called to assist. If additional forces are required, any capital gang working on that particular district is then called to assist. If additional forces are still required, furloughed personnel who have indicated their desire to be called for snow duty are then called.

CARRIER POSITION:

Claimant relinquished his entitlement to the contested work when he failed to exercise his rights under Rule 9(e) of the General Agreement to displace a junior

employee when he was placed on furlough, and he failed to indicate his availability for snow duty work.

Acting Chief Engineering Officer C. Krakar erroneously chose to compensate Claimant for a few of the dates identified by the Organization (January 4-11, 2019), not because Claimant had a superior entitlement to certain work over junior employee Carroll, but because the Carrier had recalled other junior employees from furlough ahead of Claimant in violation of Rule 9(f) due to a typographical error. In other words, in the course of investigating the Organization's allegations, the Carrier identified and voluntarily corrected a different Agreement violation which was not connected to the claim made by the Organization here.

The Organization's theory of the claim relies on the idea that it is an Agreement violation in and of itself for any junior employee to continue to be in service while a senior employee is furloughed. In contrast to such a theory, the Agreement acknowledges that there may be situations where that would be the case; Rule 9(d) provides a mechanism by which an employee may displace a junior employee within 10 days of being affected by a force reduction.

In this case, the Organization failed in their burden of proof, as they have not shown that Claimant exhausted all available options to remain in service.

ORGANIZATION POSITION:

As the Organization sees it, the Carrier violated Rule 9 of the Agreement when it failed to recall employees in seniority order beginning January 4, 2019, and improperly furloughed the senior Claimant prior to furloughing junior employee R. Carroll beginning January 24, 2019. Claimant had a preferential right to the work over the junior employee and was deprived of earning opportunities he otherwise would have had.

Claimant had more seniority as a Group A, Rank 3 B&B Mechanic than employee R. Carroll, and was fully qualified. As a result, the Organization maintains he was entitled to be assigned to the temporary mechanic position at Galewood over employee R. Carroll.

DECISION:

The Organization is correct that Claimant should have been assigned the contested work due to his greater seniority. However, the parties anticipated the possibility of such a lapse when they drafted Rule 9. Claimant was given a contractual, 10-day option of exercising his seniority rights over junior employee Carroll. In negotiating

this right, the parties did not invalidate the applicability of Rule 9, but gave affected employees rights to rectification of potential violations. These rights accrue immediately upon force reduction, give the employee the right to actually perform and be compensated for the contested work to which he has seniority rights.

The Agreement is unequivocal:

An employee failing to comply with the above will forfeit his rights to place himself in any rank in which he holds seniority, except by successfully bidding on and being assigned to a bulletined new position or vacancy, or by resuming active service through recall

Failure to timely exercise this right is expressly deemed to constitute waiver of the affected employee's right to the work because the employee could have rectified the situation entirely at the time the work was ongoing. Claimant failed to exercise this option, allowed the work opportunity to lapse, and in so doing, waived his right to the contested work.

AWARD:

The claim is denied.

July 13, 2023



Patricia T. Bittel, Neutral Member



John Schlismann, Employee Member



Sylwia Dutka, Carrier Member