



VIA FACSIMILE AND FIRST CLASS MAIL

January 23, 2009

Mr. Ricardo Sanchez, General Chairman  
International Brotherhood of Electrical Workers  
141 Waverly Avenue  
Patchogue, NY 11772

**RE: Relief Day Overtime – Engineering Department**

Dear Mr. Sanchez:

At a meeting held on June 24, 2008, the issue of payment of overtime for relief day work was discussed with your Organization and the methods of calculation that could be applied. This issue came to light after recent submissions of money claims for seventh day work.

It was discussed that either the current method of calculating relief day overtime could continue or the principle of a 24-hour clock establishing a "workday" in the same manner used during a workweek could be applied to relief days. In either case, the system utilized would be memorialized in writing. The Carrier asked the Organization to consider the options and advise the Carrier as to their choice. On August 25, 2008, you responded that the Organization was choosing a 24-day "workday" principle.

As a result, this letter will serve to confirm our understanding that in the Engineering Department the practice of applying all time worked to the day the period of service commenced will cease and going forward, the twenty-four hour clock will be utilized to distinguish an employee's regular work and relief days. This will ally the Engineering Department with the practice being utilized in the Maintenance of Equipment Department and the principles utilized in the railroad industry establishing a "day" as a twenty-four (24) hour period beginning with the start of an employee's assignment.

An example of how a relief day will be identified is, an employee who works a regular assignment, Monday through Friday, between 8:00 a.m. and 4:00 p.m., will start his/her first relief day at 8:00 a.m. on Saturday and his/her second relief day at 8:00 a.m. on Sunday.

Prior to this understanding, an employee with the same workweek noted above who started an overtime assignment at 2:00 a.m. on Saturday morning and continuing through until 3:00 p.m. on Saturday, would have worked 13 hours in addition to the 8 hours he/she regularly worked on Friday and no time worked on Saturday. If this employee worked anytime on Sunday after 8:00 a.m., he would have been paid time and one-half, not double time, since there was no time applied to the employee's first relief day.

As a result of our understanding and using the same example, this employee would now be entitled to double time for his second relief day (provided he/she worked all hours of their assignment during their work week) because the Department will now consider all time worked after 8:00 a.m. on Saturday, time worked, on the employee's first relief day.

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Other examples of how time will be applied to work days are as follows:

An employee works a 7:30 a.m. – 3:30 p.m. shift, Thursday through Monday. He begins an overtime assignment commencing at 1:00 a.m. on Tuesday and continues working until 2:00 p.m. All work from 1:00 a.m. on Tuesday until 7:29 a.m. is considered work performed on Monday. All work from 7:30 a.m. until 2:00 p.m. is work considered worked on Tuesday, the employee's first relief day.

The next week the same employee worked all the hours of his regular workweek and was called in to work at 6:30 a.m. on Wednesday and worked until 3:30 p.m., totaling 9 hours overall. This employee would be compensated 1 hour at the overtime rate for working 6:30 – 7:30 (his first relief day) and paid 8 hours double time for the time worked on his second relief day.

In another example of how the twenty-four hour clock is applied, an employee works a 8:00 a.m. – 4:00 p.m. tour, Monday through Friday. This employee works Friday, 8:00 a.m. – 4:00 p.m., goes home and reports back to duty at 11:00 p.m., he then works continuous to 8:00 p.m. Saturday evening. This employee would be compensated in addition to his regular straight time hours, time and one half from 11:00 p.m. – 7:00 a.m. and double time from 7:00 a.m. to 8:00 p.m. The time worked from 8:00 a.m. Saturday until 8:00 p.m. Saturday evening would be considered time worked on his first relief day.

Although the above defines a workday, it does not apply in one situation, that situation being a short swing relief assignment.

A short swing relief assignment is defined as an assignment that has different starting times on different days and has less than 72 hours between the starting time of the employee's assignment of their fifth workday and the time their assignment begins on the first workday of the following week. In these cases, any shift starting on the calendar day of an employee's relief days are shifts worked on their relief days.

An example of a short swing relief assignment and overtime payment:

#### Relief Assignment #1

Wed. – Thurs:	Relief Days
Fri. – Sat.:	Midnight – 8:00 a.m.
Sun.:	8:00 a.m. – 4:00 p.m.
Mon. – Tues.:	4:00 p.m. – Midnight

Utilizing the above example, if the employee works Wednesday from 4:00 p.m. – 10:00 p.m. and Thursday from 8:00 a.m. – 4:00 p.m., and this employee worked all the hours of his/her assignment during his/her workweek, she/she would be entitled to 6 hours at the time and one-half rate for work performed on his first (Wednesday) calendar relief day and 8 hours of double time for work performed on his second (Thursday) calendar relief day.

You also raised issues with how employees called in to perform service prior to and continuous with their regular assignment are being compensated. You state these employees should be continued on overtime compensation since they are performing the same work during their regular tour of duty. Although I understand your argument, payment as you suggest is not provided for in the Controlling Agreement. The Agreement provides for penalty payment for time worked before and/or after an employee's regular assignment and on relief days.

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An employee called to work before and continuous with their regular tour of duty will be compensated at the straight time rate of pay beginning with their regular start time. There is no requirement to break overtime service and return to an employee's headquarters prior to the start of an employee's regular assignment if management/supervision determines that the employee(s) so assigned to the overtime assignment will continue on the same assignment during their regular tour of duty.

There were also questions regarding emergency call-outs and what constitutes an emergency. As you are aware, employees called out under their call rule to provide emergency service on their second relief day are paid at the time and one-half rate of pay and not the double time rate of pay.

An emergency is defined as an unanticipated call out for unplanned work that requires an employee to respond immediately. As an example, a train derails after regular business hours and strikes a pole and knocks down power lines that foul the right-of-way would be considered an emergency.

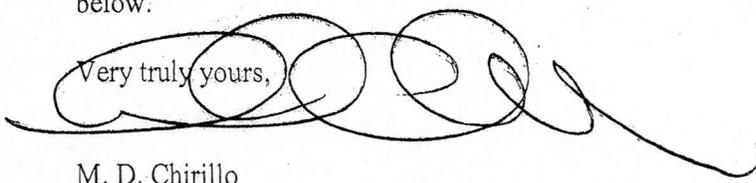
Employees scheduled for storm standby for an event that was forecasted in advance would not be considered emergency work.

Holidays were also an issue. Should one of the recognized holidays fall during an employee's regular workweek and the employee is not scheduled to work the holiday, it is agreed that the employee should not be penalized because of the holiday and it shall count towards qualifying an employee for working all the hours of their assignment during a workweek. Any late starts, early quits, personal leave, vacation, DS/DA days, FMLA, discipline/suspension, union business (except Code 7) but not limited to those mentioned during a workweek will disqualify an employee for second relief day double time payment.<sup>1</sup>

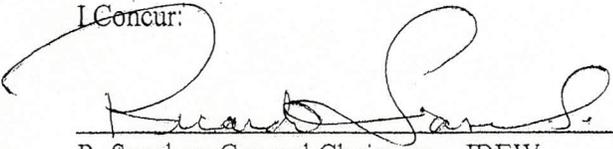
Lastly, this agreement is only valid should the Independent Railway Supervisors Association (IRSA) – Gang Foremen agree to the change inasmuch as they supervise and are compensated in the same manner as IBEW represented Electricians.

If the foregoing properly reflects our understanding, please affix your signature in the space provided below.

Very truly yours,

  
M. D. Chirillo  
Director – Labor Relations (Administration)

I Concur:

  
R. Sanchez, General Chairman – IBEW

1/23/09  
Date

cc: S. Drayzen, B. Finn, R. Semenick, J. Postorino, R. Puciloski, S. Daleo, L. Kane,  
K. Layne, Labor Relations Staff

<sup>1</sup> For the purpose of this agreement, any Military and/or Jury Duty served by an employee during the workweek will be considered part of the employee's assignment and not disqualify him/her from performing all the hours of their assignment.