

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier failed and refused to pay per diem to Work Equipment Repairman D. A. Conner, beginning on September 6, 2010 and continuing through September 9, 2010, when he was working in conjunction with Production Tie Crew 2720 and Production Surfacing Crew 2722.**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant Conner shall be allowed the per diem allowance of \$40.75 for each day assigned to work in conjunction with a production crew. This totals \$163.00. (Carrier File MW-10-14)**

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Beginning on September 6, 2010, and continuing through September 9, 2010, the Carrier assigned Claimant, a Work Equipment Repairman, to perform the on site repair of tools, equipment, and machinery being utilized by Production Tie Crew 2720 and Production Surfacing Crew 2722.

It is the position of the Organization that Claimant was essentially assigned to perform work in conjunction with the Tie Crew and Production Surfacing Crew and that he is therefore entitled to the per diem allowance outlined in Article 27.7, which rule reads as follows:

27.7 Members of maintenance crews will be entitled to payment as provided in paragraph 27.13 if they perform work in conjunction with a production crew. In addition they will be provided the same payment if they perform production work in excess of; 85 ties per day, surfacing more than 750 feet of track or installing more than 800 feet

of continuous welded rail. It is understood that maintenance crews time will begin an end at their assigned headquarters and the Carrier will provide transportation to and from the work site.

The Organization says that Claimant's performance of work equipment repairman services were critical to the initiation and timely completion of the work of the Production Tie Crew and the Production Surfacing Crew and as such is entitled to the per diem allowance under Article 27.13 for, as stated, the performance of work "in conjunction with a production crew."

It is the position of the Carrier that Article 27.7 does not apply to Claimant's position or assignment as a Work Equipment Repairman, and that a claim of this nature was never submitted from 1995 to the present.

The Carrier says that originally Article 27.7 only required the payment of a per diem allowance to Production Crews. However, the Carrier says, because it was accused of trying to avoid this per diem payment to Production Crew personnel by supplementing Production Crews with large numbers of Maintenance Crew personnel that the parties changed Article 27.7 so as to provide the per diem payment to Maintenance Crew members that were supplementing Production Crews. That is, the Carrier says, a per diem allowance to employees "essentially acting as Production Crew personnel or were otherwise performing the actual equivalent of track production work."

As concerns Carrier argument that the claim be denied in a contention that Article 27.7 has not been applied in the manner here sought by the Organization, the latter says not a single shred of evidence was presented in support of such Carrier assertions.

Further, the Organization says it can only progress claims when it is aware the Agreement is being violated, and that when it was made known that there was a violation of Article 27.7 that the instant claim was properly and timely progressed.

In disposition of a somewhat similar claim, albeit involving an I&R Foreman who worked along with several other members of a maintenance crew in the performance of crossing work, the Board held as follows with respect to Article 27.7:

In the opinion of the Board, the contract language contained in Article 27.7, *supra*, "in conjunction with," should not be viewed as having intended that maintenance personnel must become part of a production crew, or be formally assigned to a crew, to be eligible for the per diem allowance, as the Carrier would imply. It seems to the Board that this terminology is meant to recognize that members of

maintenance crews will be entitled to the per diem allowance if they perform work in conjunction with, or concurrent with, the work of a production crew. In other words, it need not involve the same work as that being performed by the production crew, but work necessary to completion of the work of the production crew on a particular task or project.

For the Board to sustain Carrier argument, the record would have to show that Claimant was at the crossing where the production crew was working by happenstance to perform previously scheduled maintenance work at that location. However, since the record shows Claimant was specifically sent to the project location for the purpose of performing work necessary or critical to the initiation and completion of project work by a production crew, it must be concluded that on the date at issue Claimant was assigned to work in conjunction with the production crew.

Lastly, as concerns further Carrier argument that Claimant is not entitled to the per diem allowance because, as provided for in Article 27.7, *supra*, he started work at his headquarters point and was provided transportation to and from the work site. This is a clearly stated requirement of Article 27.7, and may not be read to have intended that compliance is reason for the nonpayment of a per diem allowance. Moreover, that Carrier complied with this requirement supports the finding that Claimant was transported from and back to his headquarters point in pursuance of Article 27.7 for the specific purpose of performing work at the crossing in conjunction with the production crew.

The principles set forth by the Board in above cited Award No. 35 are likewise applicable to the facts and circumstances in the instant case. Although not an assigned member of a production or surfacing crew, Claimant was clearly assigned to work in conjunction with the production crews for the purpose of performing repair work on equipment, machinery and tools utilized by the production crews while at the work site. This was work necessary and critical to the performance and completion of the work of the production crews during the period of the claim at issue.

In the light of the above considerations and it being evident that the Carrier has basically offered argument as previously presented in Case No. 35 (Award No. 35), or argument that the Board found not to support the Carrier contentions involving the interpretation and application of Article 27.7, the instant claim will, for the same reasons as stated in Award No. 35, likewise be sustained.

AWARD:


Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Kevin D. Evanski
Organization Member

North Billerica, MA

Dated 7/27/12