PUBLIC LAW BOARD NO. 3888

Parties to the Dispute	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES vs. MAINE CENTRAL RAILROAD COMPANY-PORTLAND TERMINAL COMPANY	Case No. 3 Award No. 3

STATEMENT OF CLAIM

Claim of the Brotherhood (MW-85-5) that:

(a) The Carrier has violated the Scheduled Agreement, as amended on various dates since 1953, particularly Rules 3, 5, 20, 35, and 45, when the Carrier failed to properly award those positions above trackman on Bulletin dated May 3, 1984, and when it furloughed those positions from July 19, 1984, without proper notice for a period of more than seven days (ten days) until the employees returned on July 29, 1984, to the same positions, duties, and hours as they had on July 19, 1984.

(b) Each of the following Claimants:

D. A. LaPointe, Foreman
Tim Joler, Assistant Foreman
H. R. Hambrick, Machine Oper.
G. E. Bouchard, Machine Oper.
F. M. Tingley, Machine Oper.
F. A. Wood, Machine Operator
R. M. Dunbar, Machine Oper.
R. R. Hartsgrove, Machine Oper.
M. O. Fairfield, Machine Oper.
G. C. Desveaux, Machine Operator
T. J. Fairfield, Machine Operator
E. A. Douin, Machine Operator
D. C. Huard, Machine Operator
M. B. Hutchinson, Machine Oper.
J. P. Fairfield, Machine Operator
D. W. Knowles, Machine Operator
E. F. Soucy, Machine Operator

shall now be compensated for eight hours each day the employees were without work at the appropriate rate of pay for the Carrier's failure to advertise the above-listed positions and their failure to properly abolish such positions.

OPINION OF THE BOARD

On May 3, 1984, Carrier advertised positions for Tie Production Crew T-200, headquartered in Oakland, to install ties. Claimants bid the jobs. On June 1, 1984, the advertisement was cancelled, with Carrier alleging that it was unable to obtain sufficient ties. At some point, Carrier decided to work the crew spare and Claimants, the majority of whom were furloughed, were recalled to positions on June 24. Between June 25 and July 19, they worked as a tie crew and held promoted positions above that of Trackman. They were then told not to report on July 18. They returned to work on July 25 and continued to work until September 1984, when the crew was abandoned.

Initially, the Organization contends that Carrier violated Rule 20 when it failed to award or appoint the positions that were bulletined within 30 days. It goes on to allege that Carrier violated Rule 3 when it refused to allow the employes, who were contractually entitled to hold the positions, the right to bid them and Rule 5, when it did not grant five working days' notice of a reduction in force when it effected such a reduction on July 18. The Organization argues that Claimants were not covered by the spare work agreement (Rule 5, as amended) since that agreement speaks only of Trackmen and they held positions of Foreman, Assistant Foreman, and Machine Operator. It concludes that Carrier's designated officer failed to

timely respond to the claim.

The central issues in this dispute are whether Carrier was required to award the positions once it had bulletined them and whether it was barred from assigning Claimants to spare work because they held promoted positions above that of Trackman.

Rule 20 states in part that

> When a vacancy exists or a new position is created which it is known will exist for thirty (30) calendar days it shall be advertised by bulletin for a period of ten (10) calendar days. The appointment will be made within thirty (30) calendar days from the date the bulletin is posted.

The key wording in this Rule is a position "which it is known will exist for thirty (30) calendar days." The intent here is to establish long-term positions by bulletin. Carrier originally thought the positions would last more than 30 days and did not know otherwise until after they were bulletined. We find nothing in the Rule that prevents Carrier from cancelling a bulletin once such a position no longer exists.

The Organization cites the September 16, 1983 amendment to Rule 5(i) in support of its argument that Claimants should have been considered to be regularly assigned employes:

IT IS MUTUALLY AGREED, Effective September 16, 1983 -

DIVISION SPARE WORK LIST

Rule 5 (i) is amended to read - The Carrier shall establish two (2) spare work lists for each Division. The spare work list territories will be of approximately the same size. All furloughed roster-rated Trackmen who make written request within ten (10) days from being furloughed may sign up for spare work and shall have the option of signing up for either or both Division spare work lists on the Division on which they hold seniority.

To assure adequate forces are available for spare and emergency work, the following provisions will apply -

1. Employees contacted for spare work will be given the option to refuse said work no more than three times during a spare work season (November 1 to March 31, and from April 1 to october 31.)

   If an employee refuses spare work three times in a work season his name will be taken off the spare work list for the remainder of the season.

2. Employees responding to spare work must report to assignment as soon as possible but no later than 12 hours from the time contacted unless otherwise instructed by supervisor.

3. Employees who sign up for spare work list must be reasonably accessible for telephone calls for accepting spare work or will be considered as having removed himself as available for spare work for the current season. The General Chairman or his designee will be so notified in writing prior to such removal.

4. Employees may place their name on their Division spare work list(s) only -

   a. When furloughed from a bid posiiton, or

   b. Between November 1 to November 10, or from April 1 to April 10.

5. The above will apply to Portland Terminal Company employees except that there will only be one spare work list.

Rule 5(k) and (l) are hereby superseded by the above.

Rule 5 (m) is amended as follows - Roster-rated Trackmen working from a Division Spare Work List on extra or spare work will be called back for such work in seniority order. Upon completion of extra or spare work for which called, they will have the right to displace junior employees who have been called from the Spare Work List who might then be working.

This agreement may be cancelled within 30 days by either party within one year of the effective date of this agreement. Upon any such cancellation, Rule 5 will revert to its original language prior to the signing of this Agreement.

In a letter dated November 27, 1984, Engineer of Track D. C. Eldridge, in his denial of the Organization's appeal, spoke to this issue. He stated that

> In paragraph 4, page 2 of this claim, you state that Rule 5 as amended on September 16, 1983, makes no provision for the use of other than trackmen on spare or extra work. Please be advised that all employees are listed on spare work lists according to their trackmen's rating. Therefore, when extra work develops, men are called from the spare work list in seniority order. If a foreman or machine operator is needed, the senior foreman or machine operator is selected from those called from the spare work list, as was the case in this instance.

We find this argument persuasive and cannot conclude that those holding promoted positions above that of Trackmen are forever prevented by this amendment from working spare or extra work.

It follows from this that Claimants were appropriately performing spare work and that they were therefore not entitled to five days' notice under Rule 5. We find no substantial support for granting this

claim because of the procedural irregularity alleged by the Organization. After having sent the initial claim to two members of Carriers, an unusual practice in itself, the Organization cannot now be heard to object to the manner in which Carriers responded.

AWARD

Claim is denied.

C. H. Gold, Neutral Chairman

B. L. Peters, Carrier Member

W. E. LaRue, Employe Member

7/30/87
Date of Adoption