

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. 5
Award No. 5

STATEMENT OF CLAIM

Claim of the Brotherhood (MW-85-18) that:

(a) The Carrier has violated the Scheduled Agreement, particularly Rules 3, 17, and 20, when it failed to allow Claimant T. H. Brown the position of Machine Operator on Tie Crew T-200 on June 25, 26, 27, 28, 29 and July 2, 3, 5, 6, 7, 10, 11, 12, 13, 16, 18, 24, and 30, 1984, but instead assigned a junior employee, H. R. Hambrick, who was a spare Trackman.

(b) Claimant T. H. Brown, being the senior qualified Machine Operator, shall be compensated for his lost earnings on the dates listed above, on account of the Carrier's failure to allow the Claimant to exercise his seniority, as provided in Rule 3, and the Carrier's failure to properly advertise and award the positions on Tie Crew T-200.

OPINION OF THE BOARD

This case involves the claim of a Machine Operator for overtime pay on a job performed by a furloughed employee doing spare work. Claimant

- 2 -

had bid off his regular position on the dates of the claim. The Organization alleges that Claimant was the senior operator and should have received the appointment.

This Board must agree with the Organization that the individual given the position was not the appropriate one to receive it and that Claimant is owed compensation for the overtime worked in conjunction with that spare work. To rule otherwise would be to undermine the seniority rights of regular employees.

AWARD

Claim sustained. Claimant shall be compensated accordingly.

C. H. Gold

C. H. Gold, Neutral Chairman

B. L. Peters

B. L. Peters, Carrier Member

Dissent Attached

W. E. LaRue

W. E. LaRue, Employee Member

7/30/87

Date of Adoption

CARRIER DISSENT
AWARD NO. 5
PUBLIC LAW BOARD 3888

The Carrier vigorously dissents to Award No. 5 of Public Law Board 3888. The Carrier objection is three-fold: (1) the award contradicts many years of past practice on the property; (2) the award contradicts Award No. 3 of this PLB 3888; and, (3) the award could create impossible operational problems for the Carrier.

- (1) Past Practice - For many years the Carrier has provided temporary and/or spare work to employees who, at the time of the work opportunity, did not own a regular assignment. The claimant in the instant case owned a regular job and the temporary work was provided to another employee who did not hold a regular job at the time. The Carrier followed a long-standing past practice which has not previously been challenged by the Organization.
- (2) Award No. 3 - In Award No. 3 of this PLB 3888 the same Neutral Chairman found that the work in question in the instant claim was in fact "spare work." The ruling in Award No. 5 concludes by inference that the work was not "spare" since the claim of an employee who owned a regular job was sustained. The claimant, with this award, has the best of all worlds. He has the benefits of the regular job, which he bid off by choice, and the additional overtime income earned by another employee. The Carrier loses by following the agreement and past practice by now paying twice for overtime.
- (3) Operational Problems - Taking this award to an extreme conclusion would create the following problems. The Carrier has one (1) day of spare work available in location A. The senior man is working on a track section at location B, seventy-five (75) miles from location A, but location A is closer to his home. If the Carrier follows this award, before offering the work at location A to a man who is not working but available, the work must be offered to the regular man who then accepts the work. Now there is one (1) day of spare work available on the section at location B. The senior man is working at location C and must be offered the spare work; and so on and so on. Other similar scenarios could be developed. The above may at first appear extreme, but is not and if the Carrier abides by the letter of this award it would have grave difficulties efficiently operating the track department.



Bradley L. Peters
Carrier Member