

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim on the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier forced assigned Trackman D. C. Huard to the B&B Mechanic position advertised for bid in Waterville, Maine, on September 3, 1999 instead of assigning B&B Mechanic Helper Lawrence S. Page who had placed a bid on said position.
2. As a consequence of the violation referred to in Part (1) above, B&B Mechanic Helper Lawrence S. Page shall be allowed the difference in the rate of pay and time involved. (Carrier's File: MW-99-24)

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.

The facts out of which this case arises involves the Carrier having posted for bid on August 20, 1999, at its shop in Waterville, ME, a position of B&B Mechanic. No bids for the position were received from employees on the B&B Mechanic's seniority roster. The Carrier forced assigned an employee who holds seniority as a B&B Mechanic, but who was at the time working as a Trackman, i.e., Mr. D. C. Huard, to the open position of B&B Mechanic.

Claimant, as supported by the Organization, contends that the Carrier should have honored a bid he submitted for the advertised position of B&B Mechanic. This argument is made notwithstanding that Claimant does not hold seniority as a B&B Mechanic, but rather holds seniority as a B&B Mechanic Helper.

Clearly, the provisions of Article 35.1 establish the right of the Carrier to force assign, or promote, the junior employee who holds seniority on the B&B Mechanic Roster, but who

is working at the time in a lower class, to an open position or vacancy. Article 35.1 reads:

Employees who are working in other than their highest rated position may be promoted by the Carrier to a higher rated position in which they hold seniority as the needs of the service dictate. Such promotion by the carrier will be in reverse seniority order from the roster of the promoted class. The designated headquarters point or reporting point will determine the seniority zone from which the promoted employee will be selected.

The Board accordingly finds no merit in Organization argument that the Carrier was obliged to have accepted the bid submitted by Claimant or to have permitted the latter thirty days to demonstrate whether he has sufficient qualifications for the advertised position or vacancy pursuant to Article 7.1. It is evident in study of the language of Article 7.1 that it pertains to employees who, unlike Claimant, possess seniority for the position that is advertised, or, as here, a B&B Mechanic.

Lastly, as concerns Organization argument that it is open to communications as to how both sides can resolve issues such as that involved in this case, and that discussions have been held between the parties on a proposed agreement. This is not a matter that the Board may properly consider in its determination on the instant dispute. The Board is confined to application of rules as contained in the collective bargaining agreement. Thus, any change in the language of aforementioned Article 35.1 or seniority rules must come from mutual agreement between the parties, and not by means of a Board award.

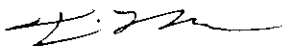
The Board finding no reason to conclude that rules of the current Agreement were violated to the detriment of Claimant, the claim will be denied.

AWARD:

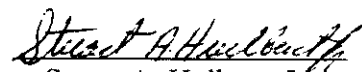
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated Feb 6, 2002