

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 assign cut-back Foreman B. L. Jordan to act as foreman with the JT-8 Production Tamper and instead assigned junior Trackman R. H. Vainio from May 30 through June 23, 2000.
2. As a consequence of the violated referred to in Part (1) above, Trackman B. L. Jordan shall be allowed the difference between the trackman and foreman rates of pay for May 30 through June 23, 2000 and eight (8) hours' pay at the foreman's time and one-half rate. (Carrier's File: MW-00-21)

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 claim before us is for the difference in pay between what Claimant received as a Trackman and what he claims that he should have earned had he been assigned as a Foreman to work with a JT-8 production tamper between Bangor (MP 56) and Lincoln (MP 14).

The Claimant described the reason that he believed he is entitled to the claim as presented in the following manner on a claim form:

On May 30th, I approached Supervisor Scott that the JT-8 was a Production tamper and should have a Foreman to go with machine, not two Operators. All work done by this tamper, should have been inspected by a qualified Foreman. The Foreman and Assistant did not inspect track tamped and we have a tamper that is assigned and works in the Rail Crew, the Production tamper was not used in the rail Crew and should be a different production

unit, and I feel my seniority was sent down the poop chute, especially after I talked this matter over with the supervisor in charge.

The Organization says that the tamper did not work within the same Form D track limits as did the Rail Crew, and that it was therefore necessary that the person who was working the tamper obtain a different Form D than that which had been obtained or given to the Foreman of the Rail Crew by the Train Dispatcher.

In this latter regard, the Organization says that since Claimant Jordan was the most senior unattached Track Foreman working in the gang as a Trackman, that he should have been assigned as a Foreman to obtain a Form D and supervise the work of the tamper operators. Although Claimant offered in the above mentioned claim statement that he had approached Carrier supervisors "to talk this matter over," in correspondence the Organization asserted that Claimant Jordan was asked "if he wanted to work with the tamper as he was the senior employee on the crew," but that he had refused the offer when informed that he was not going to be compensated at the Foreman rate of pay. The Organization says that the Carrier "then assigned junior employee Vainio to work as a foreman with the production tamper, but compensated him at the trackman's rate of pay."

In support of its claim, the Organization offers statements from various employees that it represents wherein it is stated that they "have never operated a machine on the main track and at the same time held a Form D, track authority or permit [and that] attaining the Form D, track authority or permit, has customarily been the job of the Track Foreman."

Contrary to the above statements as presented by the Organization, the Carrier submits that the issuance and taking of a Form D has never been exclusive to the Foreman's class, and that maintenance of way employees in lower rated positions can and have, as with employees from other crafts, taken Form D's from Train Dispatchers in connection with the protection of track work. In this respect, the Carrier placed into the record statements from certain of its managerial and supervisory officials wherein they state: "It has been my experience that any qualified employee can take a Form D. This is not work which belongs exclusively to Foremen. Employees under my supervision, other than Foreman, have taken Form D's in the past and not been paid the Foreman's rate of pay."

It is the further position of the Carrier that there is no merit to the claim in that the tamper was used in connection with work that had a Foreman and an Assistant Foreman assigned to the Crew. Further, the Carrier submits that even assuming, *arguendo*, there was merit to the claim, that Claimant Jordan is not a proper claimant. It says that if a claim properly existed for the difference in pay that the employee who worked with the tamper, i.e., Mr. Vainio, would be the proper Claimant, and that no claim was filed by Mr. Vainio. Moreover, the Carrier contends that since Claimant Jordan had reportedly refused to work with the tamper unless paid at the Foreman rate of pay that he is not entitled to here claim additional compensation for that position.

In the opinion of the Board, the Organization, as the petitioner, has not met a necessary burden of proof to justify an affirmative award. In making this determination the Board finds no probative support for the contention that the tamper operated outside the Form D limits as provided the Rail Crew, or that the tamper operated outside the parameters of the supervisory direction of the Foreman and Assistant Foreman assigned the Rail Crew. Further, the Carrier diametrically disputes Organization argument that it has been a practice on the property that only a Foreman may obtain a Form D for track protection, with documentary statements in support of the respective positions of the parties being evenly balanced. The Board is thus in no position to resolve this conflict in the absence of more probative evidence of record.

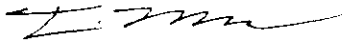
Under the circumstances of record, the Board has no alternative but to hold that the claim be denied.

AWARD:

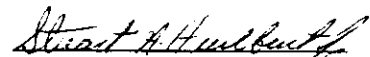
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated FEB. 6, 2002