

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 fourteen (14) day suspension assessed I&R Foreman F. C. Gallant for his alleged violation of Roadway Worker On-Track Protection Rules was without just and sufficient cause, based on an unproven charge and in violation of the Agreement.**
- 2. As a consequence of the violation referred to in Part (1) above, Mr. Gallant shall be compensated for all wage loss suffered and have his record cleared of this incident. (Carrier File: MW-03-08)**

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 Board finds that it is not able to reach out to a consideration of the merits of this case because the transcript of the investigative hearing is far too replete with transcriber notations of not being able to factually discern from a tape recording numerous words and statements given in testimony.

The transcriber placed notations in her written transcription of the tape recording to indicate several hundred words and gaps in statements that were not made a part of the written record since the tape recording from which she transcribed was found in those instances to be inaudible or hardly audible. On the first page alone, the transcriber shows three instances where words are not recorded because the person speaking is mumbling.

Because of the continuing difficulty that the transcriber experienced in transcribing testimony from the tape, she inserted a personal statement in the transcript that reads: "Note: Any testimony that is underscored means that it's a guess as to what is being said. Sometimes whole chunks of sentences cannot be understood due to failure to enunciate. Anything with a (?) following it means that it is what it sounded like to this transcriber."

In this latter regard, just the first 25 pages of the 69-page transcript shows about 150 separate instances of underscoring to indicate the deletion of a word or series of words of testimony, or a guess, on the part of the transcriber as to what was said. This, in addition, to about 50 question mark insertions on the first 25 pages to indicate that the transcriber was guessing that the word or words typed onto the written transcript were what she heard as being spoken onto the tape.

The overall condition of the transcript in this case is such that the transcriber placed a statement on the cover page that reads: "(Note: Meaning no disrespect, it would certainly better serve all parties involved – the participants, the readers of transcripts, and the typist – that future hearings be conducted with a definite emphasis on speaking clearly and loudly, as not everyone is located close to the microphone and some are inclined to mumble or speak in a monotone." The Board could not say it any clearer or better.

The Board is not persuaded by Carrier argument that although the transcript was missing "some" testimony, it was not enough to prejudice the hearing since "it appears that all of the facts of this case were revealed in the testimony" and there was "significant evidence to prove wrong doing on the part of the Claimant."

In making its determination in this case the Board does not imply that a hearing be voided because a transcript shows the inability of a transcriber to identify some spoken words. However, in the instant case there is no question that the Carrier failed in its contractual responsibility to provide "a copy of the hearing transcript," an agreement provision that the Board believes intends a reasonably complete and accurate transcript of an investigative hearing. That is, a transcript that will permit those who have a responsibility to review the record to have full benefit of what said at the hearing so that they may determine whether the facts of record support the assessment of discipline. This information should not come from having to guess or surmise that something was or was not said at the hearing.

AWARD: Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated Sept. 30, 2004