

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 compensate Truck Driver Joseph C. Kelleher five hours' straight time pay for attending a hearing on July 10, 2003.
2. As a consequence of the violation referred to in Part (1) above, Truck Driver Joseph C. Kelleher shall now be allowed five hours' pay at the truck driver's straight time rate. (Carrier File MW-03-53)

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.

It is the contention of Claimant, as supported by the Organization, that he is entitled to compensation for attending a July 10, 2003 discipline hearing. The Board, in Award No. 29, denied appeal of a three-day disciplinary suspension assessed Claimant following the July 10, 2003 hearing in a finding that the Carrier had shown sufficient just cause for the administration of that penalty.

On the date of hearing, Claimant reported for his regular 0700 to 1500 hours assignment, and worked from 0700 hours to 1000 hours, before marking off for the hearing. The investigative hearing commenced at 1000 hours and adjourned at 1117 hours. Although the record as handled on the property is silent with respect to such matter, it was offered in hearings before the Board that Claimant returned to work after the close of the company hearing and completed his assignment at 1500 hours.

Notwithstanding the belated contention that Claimant worked more than from 0700 to 1000 hours on his regular assignment, there is no dispute that Claimant received only three hours of compensation for July 10, 2003.

It is the position of the Organization that Claimant is not only entitled to pay for all time worked both before and following the company hearing, but that he is entitled to payment for the full day pursuant to Article 26, "Discipline," of the current Agreement Rules. In particular, the Organization directs attention to that portion of Article 26 wherein it states as follows: "The types of discipline which may be assessed are reprimand, disqualification, deferred suspension, relevant training, actual suspension and dismissal."

The Carrier notice of discipline reads in part here pertinent: "For your discipline you are assessed three days off without pay, a review of general safety rules pertaining to operations of a motor vehicle and a review of the Carrier's Roadway Worker Protection Rules concerning operations of roadway maintenance machines."

The Organization maintains that since Claimant was assessed a three-day suspension for the incident the subject of investigation, and compensated for only three hours for July 10, 2003, that the actions of the Carrier essentially constitute the assessment of a three-day, five-hour suspension, or, principally, a penalty other than as stated by the Carrier in its notice of discipline or provided for in Article 26.

Further, the Organization contends that past practice supports its position that Article 26 has been applied in manner as recognizing employees being entitled to compensation for time spent at a disciplinary hearing in cases of a similar nature to that involved in this case. In this respect, during appeal of the case on the property, the Organization presented statements from five employees in which it is stated that they have never been docked compensation while attending a company hearing. However, only one of the five statements mentions that the individual was the principal charged with a rule violation, and this individual does not say that he had, in fact, been assessed discipline. Although both the General Chairman and Assistant General Chairman for the Organization state that employees who were found guilty at investigative hearings of rules infractions received compensation for attending a hearing, and offer the names of a few individuals, no probative documentation was presented in support of their contentions.

There is no question that the Carrier does not have a responsibility to search its records to give support to the claims and arguments of a petitioner. Further, the Carrier says that if employees have received payment in the past for attendance at a discipline hearing that this was done in error as a consequence of time slips being incorrectly submitted to the Payroll Department and the latter not being aware that the time slips included time spent attending a discipline hearing. In any event, the Carrier states that it has "made an effort to stop this practice . . . and there have been no more payments made of this kind made for attending a hearing held on individuals until decisions have been made on the hearing through the hearing office, etc."

In the opinion of the Board, the Organization has not presented sufficient probative evidence to establish the existence of a recognized past practice to hold that employees are entitled to compensation for attendance at a company hearing in cases of a similar nature to that involved in this case. On the other hand, it is clear from a casual reading of Article 26 that in terms of compensation for attendance at a hearing that it is applicable only in instances where the finding of the hearing is that the employee was not at fault as charged. In this respect, Article 26.5 states: "If the finding of the hearing is that the employee was not at fault, he will be compensated for the actual wages lost, if any." Certainly, if it had been intended that all employees be compensated for wages lost in attending a hearing there would not have been need for inclusion of the stated exception in Article 26.5.

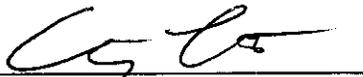
Notwithstanding the Board's findings relative to past practice, we will direct that the instant claim be sustained in part. Claimant is entitled to be compensated for time actually worked following the hearing.

AWARD:

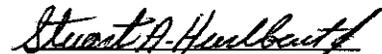
Claim sustained to the extent set forth in the above Findings.



Robert E. Peterson
Chair & Neutral Member



Anthony Lamento to ~~Timothy W. McNulty~~
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 10/19/04

**B.M.W.E.
RECEIVED**

(OCT 21 2004

Office of the
General Chairman
Northeastern
System Federation