

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 forced assigned Equipment Operator Robert J. Henry to the Maintenance Crew 3646 Foreman position headquartered at Waterville, Maine on September 9 through September 20, 2002.**
- 2. As a consequence of the violation referred to in Part (1) above, Equipment Operator Robert J. Henry shall be allowed the per diem allowance of \$28.00 per day for September 16 through September 20, 2002, and for September 23 and 24, 2002. (The Carrier paid the per diem allowance for the week of September 9 through September 13, 2002, although it later argued that it had done so in error.) (Carrier File MW-03-05)**

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 arises in a contention that the Carrier was in violation of Article 27.15 of the current Rules Agreement when it force assigned Claimant from a position in a production crew to a non-production assignment. Article 27.15 reads as follows:

It is understood that the provisions of the Agreement which require employees to protect their seniority rights in their home seniority district or which allow for the force assignment by the Carrier to temporary non-production positions will not apply to employees while they are working in Production Crews.

It is the position of the Carrier that the provisions of Article 27.15 did not preclude the force assignment that occurred in the present case. First, it says the Foreman

position to which Claimant was force assigned was not a "temporary" position as mentioned in the rule. Secondly, the Carrier cites the provisions of Article 8, "Filling Vacant Positions," and Article 35, "Promotion by the Carrier," as concerns the force assignment of an employee when a "permanent" position that has been advertised fails to attract a qualified bidder.

In particular, the Carrier cites Article 8.3(e), wherein it states: "In the event no bids are received from qualified employees for an advertised vacancy, the Carrier will promote, if applicable, in accordance with Article 35 of this Agreement." In this latter regard, 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.

There is no question that the position to which Claimant was force assigned was advertised and bulletined as a permanent position. Award Bulletin BG-2002 of September 6, 2002 shows the dates of bidding for the position to have been from August 23, 2002 to August 29, 2002, with a designated headquarters point in Waterville, ME. The Award Bulletin also lists Mr. N. L. Deprey as being awarded the position, pending qualification. There is no question that Mr. Deprey was subsequently not able to demonstrate that he was qualified for the position, and that there was a need to force assign someone to cover the position.

It is also evident that Claimant was aware that the position was of a permanent nature. Claimant said the following in a letter of claim: "According to Awards-BG-2002, this job was awarded to Nelson Deprey (pending qualifications). When Mr. Deprey failed to pass the required NORAC qualification that week, Mr. Henry was force assigned to the position." In other words, in noting that the position was bulletined and initially awarded to another employee, pending qualification, Claimant was aware that the position was advertised as a permanent position.

The Board is also not persuaded by Organization argument that the position to which Claimant was force assigned be viewed as a temporary position because it was abolished after 22 days.

In this latter regard, the Board has studied those provisions of Article 8.3(a) wherein it states, as referenced by Organization: "Positions subject to advertisement will be newly created permanent positions and vacancies expected to be more than thirty (30) days." The Board has also examined Article 8.4(a), which reads: "Temporary positions are positions of 30 days or less and permanent positions pending award."

Careful examination of the above referenced rules leads to the conclusion that they have absolutely no bearing on the instant dispute. As concerns Article 8.3(a), nothing of record shows the position at issue to have been advertised as other than a newly created permanent position. It was not, as the language of Article 8.3(a) implies in making reference to the 30-day period of time, the advertisement of a vacancy expected to be more than 30 days. And, in regard to Article 8.4(a), nothing of record shows that the position to which Claimant was force assigned was a permanent position that was "pending award." A bulletin award had been made, but the sole bidder was found not to be qualified. The Carrier therefore had the right to invoke Article 35.1, *supra*, and force assign Claimant to the position as the junior qualified employee on the seniority roster.

That after advertising and filling the position as a permanent position the Carrier subsequently found reason to abolish the position after 22 days does not serve to define or place it in the category of a temporary position. Absent restrictive rules, the matter of what positions are to be bulletined as permanent positions and how long they are to remain in effect has generally been recognized as a matter for a carrier to determine in the fair and reasonable exercise of the management of its property in the best and most efficient way.

On the basis of the above considerations the Board does not find the rules relied upon by Claimant and the Organization to support the instant claim. The claim will, therefore, be denied.

AWARD:

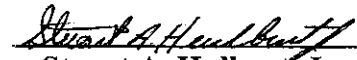
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated June 29 2005