PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOOD OF MAINTENANCE OF WAY EMPLOYES
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 pay per diem for July 24, 2003 to Inspection & Repair (I&R)* Foreman John P. Tracy when he was assigned to work in conjunction with the Production Surfacing Crew at Attwell Road in Pittsfield, Maine.

2. As a consequence of the violation referred to in Part (1) above, I&R Foreman John P. Tracy shall be allowed the per diem allowance of $31.75 for July 24, 2003. (Carrier File MW-04-03)

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.

On the date at issue, July 24, 2003, Claimant maintains that the work he was *assigned to perform by a supervisory official at a rail crossing (Attwell Road in* Pittsfield, Maine) "was nothing short of being production in nature." In this respect, Claimant described the work he had performed to be as follows in a letter of claim to the Carrier:

> We removed the asphalt from the crossing area, cleaned the debris away from the rails in preparation for the surfacing crew to surface through the crossing. Once this was done, we worked behind the tamper, picking up down ties. Then the tamper made a second pass through the crossing. Afterwards we prepared the crossing for the installation of the rubber mud rails. All of the work that I have described is production work. It would be different if we were making a small repair, let's say, to a broken joint within the crossing.

> Except for replacing the rails and crossties, this was a complete crossing rehab. This was not a maintenance project, but clearly a production project, taking me away from my daily maintenance duties.

Claimant thus asserts that he is entitled to the claimed per diem allowance of $31.75 pursuant to Article 27.7 of the Agreement Rules. This contract language reads:

> Members of maintenance crews will be entitled to payment as provided in paragraph 27.13 if they perform work in conjunction with a production crew. In addition they will be provided the same payment if they perform production work in excess of; 85 ties per day, surface more than 750 feet of track or install more than 800 feet of continuous welded rail. It is understood that maintenance crews time will begin and end at their assigned headquarters and the Carrier will provide transportation to and from the work site.

It is the position of the Carrier that Claimant is not entitled to the per diem allowance because he was not a member of a maintenance crew at the time in question. Further, it notes that as Claimant himself has stated, he worked ahead of and behind the production (surfacing) crew. Thus, the Carrier urges, Claimant was not performing production work with a production crew, but was rather assigned work that has been recognized to be traditional track maintenance work at a location where a production crew was performing production work.

While the Carrier argues that Claimant was not a member of a maintenance crew on the date claimed, there appears to be no question that Claimant, an I&R Foreman, worked along with several other members of a maintenance crew in the performance of crossing work at Attwell Road.

In the opinion of the Board, the contract language contained in Article 27.7, *supra*, "in conjunction with," should not be viewed as having intended that maintenance personnel must become part of a production crew, or be formally assigned to a crew, to be eligible for the per diem allowance, as the Carrier would imply. It seems to the Board that this terminology is meant to recognize that members of maintenance crews will be entitled to the per diem allowance if they perform work in conjunction with, or concurrent with, the work of a production crew. In other words, it need not involve the same work as that being performed by the production crew, but work necessary to completion of the work of the production crew on a particular task or project.

For the Board to sustain Carrier argument, the record would have to show that Claimant was at the crossing where the production crew was working by happenstance to perform previously scheduled maintenance work at that location.

However, since the record shows Claimant was specifically sent to the project location for the purpose of performing work necessary or critical to the initiation and completion of project work by a production crew, it must be concluded that on the date at issue Claimant was assigned to work in conjunction with the production crew.

Lastly, as concerns further Carrier argument that Claimant is not entitled to the per diem allowance because, as provided for in Article 27.7, *supra*, he started work at his headquarters point and was provided transportation to and from the work site. This is a clearly stated requirement of Article 27.7, and may not be read to have intended that compliance is reason for the nonpayment of a per diem allowance. Moreover, that Carrier complied with this requirement supports the finding that Claimant was transported from and back to his headquarters point in pursuance of Article 27.7 for the specific purpose of performing work at the crossing in conjunction with the production crew.

In the circumstances of record, the claim will be sustained.

AWARD:

Claim sustained.

Robert E. Peterson
Chair & Neutral Member

Anthony F. Lomanto
Carrier Member

Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated 6/29/05