

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
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 and reimburse Waste Water Treatment Plant Operator Charles V. Miller for expenses when he was required to attend classes to maintain his water treatment plant operator's license on October 23 and November 4, 2003.
2. As a consequence of the violation referred to in Part (1) above, Waste Treatment Plant Operator Charles V. Miller shall now be allowed one day's pay for October 23, 2003 when Mr. Miller attended a waster water treatment training class in Livermore Falls, Maine, plus mileage to and from; and, one day's pay for November 4, 2003 when Mr. Miller attended a waste water treatment training class in Portland, Maine, plus mileage to and from. (Carrier File MW-04-13)

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.

As stated above, it is the contention of Claimant and the Organization that the Carrier is in violation of applicable agreement rules in a refusal to compensate Claimant, a Waste Water Treatment Plant Operator (WWTPO) at Carrier's Waterville, Maine facility for expenses incurred in attending classes so as to maintain a water treatment operator's license. In this respect, it is undisputed that the State of Maine requires the occupant of such a position to possess and maintain a water treatment operator's license.

It is the position of the Organization that Article 38.1 of the controlling Agreement prescribes that the Carrier will compensate an employee who is required by law to

attend classes such as involved in the dispute, and that it has been a past practice to do so, as well as to reimburse an employee for vehicular mileage expenses.

Article 38, "Examination, Training, Qualifying," in subpart (1) reads as follows:

All employees who are required by law or the Carrier to attend classes for operating rules, safety rules, medical and/or eye tests (including drug and/or alcohol tests), including time spent qualifying on physical characteristics or other specific training shall be paid for the actual time involved at the straight time hourly rate. Employees required to travel for such examinations, training, or qualifying, will be allowed the prevailing corporate rate. When required to remain overnight, employees will be paid expenses in accordance with Article 42 of this Agreement. (Emphasis Added.)

The Organization also cites the following provisions of Agreed-Up Question and Answer No. 3 in application of the current ST/BMW Agreement of May 8, 2003:

Q3. The Water Treatment Plant positions are to be filled by the B&B Foreman classification. How will those positions be filled?

A3. The Carrier will accept applicants through the normal bid procedure outlined in Article 8. The Carrier will award these positions only to employees who hold the required Treatment Plant Operator's license at the time the position is awarded. Preference in awarding positions to licenses employees will be as follows, ...

Employees will be reimbursed for the cost of initially obtaining this license. This cost will include any fees for taking the test and obtaining the initial license. This payment will be made provided, ... (Emphasis Added.)

It is the position of the Carrier that aforementioned Article 38.1 is not applicable to the instant dispute. It says it has always been an employee's responsibility for maintaining a license. Further, the Carrier says that in negotiations leading to the current Agreement of May 8, 2003 that the parties agreed to substantially increase the rate of pay for a WWTPPO so that the occupant of such position would then bear all costs associated with both initially obtaining a license and any periodic training or certification necessary to subsequently maintain a license.

In this latter regard, the Carrier said, in part, the following in a letter of May 19, 2004 to the Organization in denial of the claim:

The fee for the WWTPPO license is approximately \$85.00, once every two years. (This averages out to \$42.50 per year.) Clearly the parties did not agree to raise the WWTPPO rate of pay by thousands of dollars a year, merely to reimburse him for the bi-annual license fee. It is obvious that the intent was to cover all costs associated with the training and certification that is required in order to hold the WWTPPO position. The fact that the Organization even admits half of the truth on appeal, illustrates that both parties are aware of the real intent associated with the generous increase in the WWTPPO's rate of pay. Please also refer to Q & A number 3 on page 4 of 7 of the current agreement, which provides for only the initial cost of obtaining the license and initial fees associated with taking the required test.

Also, even if the Claimant has been paid for incurring these expenses in the past, that does not support the Organization's present claim. Such payment to the Claimant was issued in complete error by someone who was not familiar with the Agreement or the negotiations associated with reaching the new Agreement. The Claimant is not presently entitled to the relief he seeks.

The Organization does not dispute Carrier argument that the rate of pay for a WWTPPO was the subject of negotiation in the most recent contract talks. However, the Organization disputes the intent of agreement between the parties having been to the extent offered by the Carrier.

The Organization, on the one hand, acknowledges that when the current Agreement was adopted it was with the understanding that placement of the WWTPPO in the wage bracket for the highest rated positions covered by the Agreement was with the understanding that the pay increase would cover the cost of an employee "initially obtaining" a WWTPPO license and "fees" associated with "the maintenance" of the license. However, the Organization does not agree with the Carrier that the increased rate of pay for a WWTPPO eliminated a Carrier Article 38.1 responsibility to compensate an employee at the straight time rate of pay for attending classes, as well as travel expenses, for the purpose of maintaining a license as required by law. Thus, the Organization argues that the provisions of Article 38.1 are applicable to the claim for both time lost attending classes and the prevailing mileage rate for travel to and from classes for Claimant to maintain a license.

On the other hand, it seems to the Board that in citing Agreed-Upon Question and Answer No. 3, the Organization presents a conflicting view as to the force and effect of that particular provision of the Agreement. We say this because Question and Answer No. 3 clearly states that an employee "will be reimbursed" for the cost of initially obtaining a license. It is difficult, therefore, to comprehend how this

language, in interpretation of the master agreement, may be properly held to intend, as the parties appear to be in agreement, that has no application with respect to an employee initially obtaining a license. The Board makes this observation notwithstanding that the question of reimbursement for the initial attainment of a license is not to be a part of the instant dispute.

It does, however, concern the Board that no probative evidence of record has been presented to show that it was the mutual intent of the parties in negotiation of the May 8, 2003 Agreement to have it supersede the provisions of Article 38.1. Therefore, the Board has no alternative but to hold that the clear and unambiguous terms of Article 38.1 be viewed as remaining in full force and effect and thereby controlling with respect to the dispute here at issue.


While the Carrier offers argument that Claimant could have attained or remained certified by taking approved course online on various websites, it is obvious that this assertion was not advanced by the Carrier until several months after the two claim dates. As the Organization also submits, nothing of record shows that Claimant was ever provided that information or instructed to, in the future, take classes online. Moreover, it would seem to the Board that if Claimant was to be so instructed that the provisions of Article 38.1 would require compensation for actual time spent on the website.

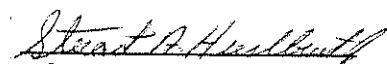
In the circumstances of record as presented and developed, it will be the decision of the Board, and it will so direct, that Claimant be compensated for actual time involved in attending classes at the straight time rate of pay as well be compensated at the then prevailing corporate vehicular mileage rate in reimbursement of travel to and from classes pursuant to Article 38.1 of the Agreement.

AWARD:

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


Robert E. Peterson
Chair & Neutral Member


Anthony F. Lomanto
Carrier Member


Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated 3/7/06