PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOOD OF MAINTENANCE OF WAY EMPLOYES
) 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 properly compensate Work Equipment Operators Richard Breor and Timothy Godin for the time they were on vacation during 2004.

2. As a consequence of the violations referred to in Part (1) above, Work Equipment Operators Richard Breor and Timothy Godin shall be allowed the difference between the $19.01 rate and the prior rights rate of $19.29 per hour for all vacation days taken in 2004. (Carrier Files MW-05-03 and MW-04-23)

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 Claimants, and the Organization on their behalf, that they are entitled to be paid the highest Work Equipment Operator hourly rate of pay ($19.29) for all vacation days as opposed to an hourly rate of pay of $19.01 as paid to them by the Carrier.

Article 7(a) of the National Vacation Agreement is cited in support of the claim. This article reads as follows:

> An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.
>
> This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on

> such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier.

Also at issue is Carrier/BMWE Side Letter No. 2, an agreement or understanding that reads in part here pertinent:

> It is understood that when prior rights Maine Central Machine Operators and prior rights Boston and Maine Work Equipment Operators operate the equipment listed below, they will be paid the highest Equipment Operator rate — Front End Loader, Swing Loader, Backhoe, Gradall

There is no question that both Claimants satisfy the prior rights provisions of Side Letter No. 2, and that they held Work Equipment Operator positions at the time they went on vacation. It is likewise undisputed that the positions of Work Equipment Operator held by Claimants are advertised and posted with an hourly rate of $19.01, and that the highest Equipment Operator hourly rate is $19.29.

There is a dispute between the parties, however, as to whether Claimants satisfied that part of Side Letter No. 2 as concerns "operate the equipment listed" when on vacation.

In this latter regard, the Carrier argues that since it is obvious the Claimants would not be operating the work equipment while on vacation that they are only entitled to the advertised rate of their position, namely, $19.01 per hour. It says that if it was not intended that the higher rate only applies when a prior rights employee operates the specifically listed equipment that there would be no need to list the equipment that was to be operated in order to qualify for the higher rate of pay.

The Carrier does not dispute Organization argument that since Side Letter No. 2 was adopted in negotiation that prior rights Work Equipment Operators have received the higher hourly rate of pay while on vacation. However, the Carrier maintains that such payment was made in error by its Payroll Department unbeknownst to those responsible for the interpretation of its labor agreements.

In the opinion of the Board, neither Article 18 of the Vacation Agreement nor Side Letter No. 2 supports the position of the Organization.

Article 18 of the National Vacation Agreement is a *general* rule of agreement, whereas Side Letter No. 2 is a *specific* rule or contract. It is a fundamental principle of contract interpretation that where there is a conflict between general language of an agreement and specific language of an agreement that the specific provision will govern. In this same respect, it is also well recognized that the words used by the

parties to the agreement are to be taken and understood in their natural, usual and ordinary grammatical sense unless such would lead to an absurdity.

Side Letter No. 2 clearly sets forth two conditions that must be met to receive the higher, $19.29 per hour rate of pay. That is, be a prior rights employee, and, secondly, as concern the instant dispute, "operate" the equipment listed, a circumstance that is not accomplished while on vacation.

The word, "operate" must be viewed as described in Webster's International Dictionary: "To perform a work . . . produce an effect; To perform an operation or series of operations." This contract terminology may not be interpreted as the Organization seeks, i.e., the higher rate of pay be paid at all times whether or not a prior rights employee is, in fact, operating one of the specifically listed four pieces of equipment. In order to interpret Side Letter No. 2 as the Organization urges, it would be necessary to insert language into the agreement, a matter or function not within the authority of the Board.

Certainly, the only reasonable expectation that the Claimants could have when taking vacation is to be paid no more or less than the standard rate of pay applicable to the positions that they had bid and been awarded, which is $19.01 per hour.

That the Carrier Payroll Department may have erred in the past by improperly allowing the higher rate of pay does not serve to overcome the clear and unambiguous terms of the applicable agreement provisions.

AWARD:

Claim denied.

Robert E. Peterson
Chair & Neutral Member

Anthony F. Lomanto
Carrier Member

Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated 3/9/06