

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 directed Welder/Foreman R. Principato to report to Waterville, Maine to pick up Boom Truck TC-2185 and assigned him to operate said truck throughout the day on April 8, 2004, instead of Truck Driver D. Emery.**
- 2. The Agreement was further violated when the Carrier directed Welder/Foreman R. Pincipato to report to Waterville, Maine to pick up Boom Truck TC-2185 and assigned him to operate said truck throughout the day of April 22, 2004, instead of Truck Driver J. Kelleher.**
- 3. As a consequence of the violation referred to in Part (1) above, Claimant D. Emery shall now be compensated for eight (8) hours at his respective straight time rate of pay and three (3) hours at his respective time and one-half rate of pay.**
- 4. As a consequence of the violation referred to in Part (2) above, Claimant J. Kelleher shall now be compensated for eight (8) hours at his respective straight time rate of pay and three (3) hours at his respective time and one-half rate of pay. (Carrier File Nos. MW-04-18 and MW-04-21)**

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 the Organization points up, this claim was initiated and handled as two separate claims on the property because both claims involve what the Organization alleges was the Carrier's decision to assign a Welder/Foreman to perform truck driver

work in violation of current Agreement rules, namely, Article 2, Intra-Craft Jurisdiction, and Article 5, Seniority Classes.

The Organization avers that on Wednesday, April 8, 2004, the Carrier instructed Welder/Foreman Principato, who is headquartered at Rigby Yard, to report to Waterville, Maine to pick up Boom Truck TC-2185, drive it to Rigby Yard, and operate it for the day. It says Welder/Foreman Principato expended eight hours straight time and three hours overtime in the performance of this truck driver work. In the circumstances, the Organization maintains that since Claimant Emery was assigned and working as a truck operator at Rigby Yard, and was readily available and fully qualified to perform all truck driver work, that the Carrier improperly assigned the work at issue to Welder/Foreman Principato.

As concerns the second part of the claim, the Organization says that on Wednesday, April 22, 2004, the Carrier instructed Welder/Foreman Principato to go to Waterville, Maine to pick up Boom Truck TC-2185, drive it to Rigby Yard, load the truck with rail, and drive it to Dixfield, Maine on the Rumford Branch. It says Welder/Foreman Principato expended eight hours straight time and three hours overtime in the performance of this truck driver work and that furloughed truck driver Claimant Kelleher thereby suffered a clear loss of a work opportunity when he was not called from furlough for this work.

It is the position of the Organization that the work of operating a boom truck is reserved to chauffeurs (truck drivers) under Article 5.1 6 and that the responsibility of driving a boom truck is not directly related to the responsibility of a position of Welder/Foreman. Further, the Organization says it is a well-established principle that work is reserved to those employees who customarily perform such work in accordance with the terms of applicable agreements.

The Carrier disputes the contentions of the Organization. It makes the unrefuted statement that Claimant Emery was fully employed and worked as a chauffeur (truck driver) on the date of claim. It also maintains that Claimant Emery has no standing as an aggrieved employee in the present dispute, offering that Article 2.3 of the current Agreement states: "Assignment of employees pursuant to this Article 2 will not constitute a basis for any claim by other employees, provided no employee of the affected class or craft is furloughed."

In the circumstances, the Carrier submits that Claimant Emery was not an affected *furloughed* employee and, further, suffered no loss of income or work opportunity as alleged since he was fully employed on the date at issue.

The Carrier also submits that Article 2.1 allows employees to perform ancillary tasks that are directly related to or associated with the main task that the employee

is capable of performing. Here it is noted that Welder/Foreman Principato is a qualified truck driver.

The Carrier also submits that the claim as initially filed only alleged that "the Carrier had Mr. Principato report to Waterville, Maine to pick up the boom truck, TC 2185, and take it to Rigby Yard." It was never asserted in the claim, the Carrier says, that Mr. Principato was, as the Organization here asserts, that he was "assigned to operate said truck throughout the day." The Board would note, however, that the initial claim, after saying, "take it to Rigby Yard," went on to state "and work with it for the day." The Organization did not, however, submit any probative support for the contention that Mr. Principato did, in fact, work with the truck throughout the day.

In regard to Claimant Kelleher, the Carrier submits that it made every effort to contact him for the job, but that it took several phone calls and a certified letter before he responded to the Carrier. It says that Claimant Kelleher thereafter came back to work as soon as a return-to-work physical could be scheduled and completed. Accordingly, the Carrier says that since Claimant Kelleher failed in a responsibility to make himself readily available for recall and work it may not be held that he was a furloughed employee who was affected by the use of the Welder/Foreman to operate the boom truck.

The Board finds lacking in merit argument of the Organization to the effect that the fact Claimant Emery was working where the Carrier assigned him does not make him an improper claimant. Nor do we find merit in argument that Claimant Kelleher was not available because of the Carrier's unilateral requirement of a return to work physical. Such a physical has long been recognized as a prerogative of carriers as being necessary to a determination of physical fitness for employees who have been off work for extended periods of time.

It being evident to the Board that the Organization has failed to meet a necessary burden of proof in support of its contentions, the claim will be denied.

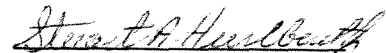
AWARD: Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 10/23/06