

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 add Mr. Joseph C. Hafford's name to the Engineering Department Trackman seniority roster commencing July 7, 2004.**
- 2. As a consequence of the violation referred to in Part (1) above, Mr. Joseph C. Hafford shall be shown on the Engineering Department Trackman seniority roster with a date of July 7, 2004. (Carrier File MW-05-06)**

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.

An employee with seniority exclusively in the Carrier's Bridge and Building (B&B) sub-department, Claimant was called while on furlough to cover some vacancies in the Track Department, a sub-department of the Engineering and Mechanical Department that has seniority rosters for employees that are separate and apart from those in the B&B Department.

The gist of Organization argument is that when Claimant was called for work in the Track Department that he then became entitled to seniority in that Department as a Trackman, or new employee, beginning July 7, 2004. In this same respect, the Organization argues that since Claimant was furloughed, he was unattached to any department, and that when called for work he was hired into the Track Department and should thereby have acquired Trackman's seniority from the first day he drew pay for that position, namely, as claimed, July 7, 2004..

In support of its contentions, the Organization directs attention to Agreement Article 4.1(c), which reads as follows:

Seniority in the lowest class on a given roster will begin on the date that pay starts on a position covered by that roster.

The Carrier maintains that Claimant was provided a work opportunity as a "favor" to help him financially while on furlough until a position opened in the B&B Department that he could hold by virtue of his seniority as a B&B Mechanic in that Department, which has B&B Mechanics as the lowest class on that roster. The Carrier says that in order to attain seniority in the Track Department it would have been necessary that Claimant bid for and be awarded a Trackman's position, a circumstance not present in this dispute.

During handling of the claim on the property the Organization maintained that the services Claimant performed upon being called from furlough were paid for at the Trackman rate of pay. The Carrier does not deny this fact. However, it submits that it would have been inappropriate to pay Claimant the B&B Mechanic rate of pay, which is higher than that of a Trackman.

There is no question that Article 4.1(c), supra, speaks for itself, and emphasizes when seniority commences for an employee entering the lowest class. In the instant case nothing of record shows that Claimant was a new hire, as urged by the Organization. He was not required to complete an application for employment or undergo a pre-employment medical examination. The work available at the time Claimant was called from furlough was that which accrued solely to employees with established seniority in the Track Department, or an employee hired into that Department. Claimant did not hold seniority in the Track Department, and a contractual Agreement right did not exist for individuals other than those with seniority in the Track Department to be called from furlough for work in that Department.

Certainly, any change in Agreement rules to permit the calling of employees from furlough to perform work in a seniority sub-department for which they do not hold seniority, a matter that could affect the contractual rights of other employees on that seniority roster to regular or overtime work, must be made as provided for under the provisions of the Railway Labor Act. It is not a subject matter that may be accomplished by reason of a Carrier supervisory official knowingly or unknowingly violating Agreement rules in an effort to provide a temporary work opportunity for a long-time employee who was on furlough from his own seniority sub-department and in which there was, unfortunately, no need for a recall of employees. As set forth in Award No. 15128 of the First Division, NRAB, BRT v. CMStP&P, Referee David R. Douglas: "A seniority right is not a gift of management. It amounts to a valuable property right which is earned by an employee who expends his energies and efforts on behalf of his employer over a period of time."

Accordingly, without prejudice to the position of either party where the facts and circumstances differ, the Board finds that Claimant may not be held to have attained seniority in the Track Department. The claim will, therefore, be denied.

AWARD:

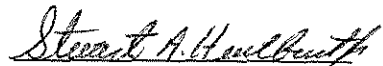
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 2/5/08