

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 assigned Maintenance Crew Foreman Paul Jackson to operate the Production Tie Crew truck on October 14, 16, 17, 18, 19 and 21, 2005 to haul materials from the North Anson project instead of assigning Production Tie Crew Truck Operator Larry Cookson.
2. As a consequence of the violation referred to in Part (1) above, Production Tie Crew Truck Operator Larry Cookson shall now be allowed forty (40) hours pay at the truck operator's rate and twelve (12) hours pay at the truck operator's time and one-half rate. (Carrier File MW-06-07)

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.

The claim as filed with the Carrier under date of November 5, 2005 was on the basis that Claimant was entitled to the time claimed because a Carrier-owned truck that was driven by a Maintenance Foreman to take materials to a track project at North Anson, Maine, for Production Tie Crew 3642 was a truck "assigned" exclusively to Claimant in holding the position of Chauffeur/Truck Driver on Production Tie Crew 2713. In this respect, the nature of the claim was stated in part here pertinent on a Claim Form as submitted to the Carrier:

In the past when they (Carrier) needed the Truck they (Carrier) would send it with the driver who is assigned to the Truck. That is the grounds for the claim."

In a December 19, 2005 letter to Claimant, with copy to the Organization, the Carrier denied the claim, stating in part the following:

In your claim you stated that you took the truck to Waterville and removed it from service for tires. At that point the Waterville maintenance crew foreman hi-railed the truck up the Madison Branch and used it to deliver ties and to work on the N. Anson project. The facts in this case are that an employee bids a job not a specific truck or machine also with jobs that are posted only the location is specified. The fact that Mr. Paul Jackson (foreman) at the time drove the truck is not important because there was a vacancy in the maintenance crew at the time and Mr. Jackson had requested to cover the job pursuant to Article 8.4(b) of the contract. Mr. Jackson had at the time bid on the vacancy and was awarded it on the next round of awards.

Above referenced Article 8.4(b) of the current Agreement reads in part as follows:

If a temporary position is to be filled, the provisions of Article 35 will apply. In the event an employee desires to fill a temporary position, he will advise the Carrier within three (3) days of the position being advertised. At the end of this three (3) day period, the temporary position will be assigned to the senior employee applying. An employee so assigned at his request to a permanent position pending award will be considered an automatic bidder for such position. An employee assigned to a temporary position under Article 35 who is displaced by a senior employee as described above will return to his former assignment.

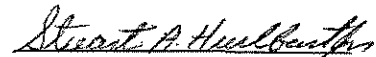
Nothing of record, including the job bid as posted for the position held by Claimant at the time, Position AY-22, supports the contention that an employee awarded a position of Chauffeur/Truck Driver has a contractual right to operate a specific vehicle when awarded such a position. Nor does the record shows any contractual support for the contention that Claimant, an employee assigned to Production Tie Crew 2713 as a Chauffeur/Truck Driver, had a contractual right to perform work on a vacant position that attached to Production Tie Crew 3642.

The record also shows as concerns the dates of claim that except for Sunday, October 16, 2005, Claimant was fully employed as a Chauffeur/Truck Driver on his assigned position with Production Tie Crew 2713. And, as concerns October 16, 2005, the Board finds no reason to conclude other than as did the Carrier that pursuant to Article 10 Claimant was not entitled to an overtime call for that date.

In the light of the particular circumstances of record and overall study of the record as presented, the Board finds that neither Claimant nor the Organization on his behalf has met a necessary burden of proof in support of the claim. 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