

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 allow Claimants W. Perro, S. Pelkey, R. Randall, V. Olson, and A. Bussell to work their assigned trackman positions on Rumford Maintenance Crew #3541 on May 15, 16, 17, 18 and 19, 2006 in violation of Article 8 and Article 38.
2. As a consequence of the violation referred to in Part (1) above, the Claimants shall each be allowed five (5) days pay at the trackman's rate of pay ($\$18.85 \times 40 = \754.00) plus five (5) days' credit towards vacation allowance and any Railroad Retirement credits due. (Carrier Files MW-06-16, 17, 18, 19, and 20)

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 claims at issue are based on the premise that after being notified of a recall from furlough and being successful bidders for vacant or open positions that they were withheld from promptly covering those positions by reason of the Carrier not timely scheduling a return to work physical examination.

Although the Organization cites provisions of Article 8 and Article 38 of the Agreement in support of the claims, the Board does not find these particular rules to substantiate the contention that, as it asserts, physical examinations should have been scheduled for the day the positions were advertised. Nor does the Board find the record to show documentary support for the Organization contention that "in the past the Carrier always scheduled the senior most furloughed trackmen for their return to work physicals well in advance of their returning to work."

In this latter respect, the Carrier submits that while there may have been times that it endeavored to schedule physicals prior to the awarding of positions as a benefit to the Carrier, it was not by reason of any contractual or Agreement obligation. For the most part, the Carrier says it has been the practice to wait until after positions are awarded to schedule the successful bidders for physicals, as in the instant case. This, the Carrier points up, because there are employees of varying seniority in many different locations on its property, and it is not required to predict where each employee might end up bidding and holding a job. Thus, the Carrier asserts it is only required by current Agreement rules to award positions to the proper and senior bidders, and that such requirement was met in the instant dispute.

The Carrier further maintains that the Claimants were scheduled for return-to-work physicals upon their being determined successful bidders and covered their assignments as soon as they were cleared by Health Resources, the Carrier's contract agent for the performance of physical examinations. And, in this regard, the Carrier says the process was completed in a standard and timely fashion.

As concerns the Organization's further reference to Section (d) of Article 8, wherein it states furloughed employees will "occupy" positions within ten (10) days from the date notified of an award. It seems to the Board that this language must be read in the light of a succeeding sentence in Section (d) and not, as the Organization avers, as intending that a physical be given within that time frame. Here, the Board will note that this further language proscribes a failure to return will result in forfeiture of all seniority under the Agreement. In other words, it would seem to the Board that the ten (10) days relates to a return to service, with any delay account being required to take a return-to-work physical extending that time period.

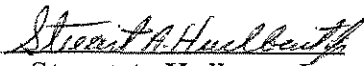
In view of the above considerations and the Board not finding the five (5) day period of time it took to schedule and complete the physical examinations to have been excessive, the claims will be denied.

AWARD:

Claim(s) 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