

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 David L. McCaw is entitled to payment in the amount of eight hours overtime and two and one-half hours double time for April 5, 2006 when it arbitrarily removed him from his Work Equipment Repairman position at a derailment site and, in turn, assigned a junior employee to perform such work. Also, seven hours overtime for April 6, 2006 when Claimant was not again permitted to work at the derailment site, and the junior employee worked such claimed overtime hours.

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.

On Wednesday, April 5, 2006, a mid workweek day for Claimant, he was assigned to work at a major derailment site at Bangor, Maine. At about 3:00 p.m., the end of the regular work day, Claimant was notified by his Supervisor that on instructions of a Carrier officer he was being removed from work at the derailment and that he was to return to headquarters in a contention that he was not devoting himself exclusively to derailment work.

The Carrier directed an employee junior in seniority to replace Claimant at the derailment site. The junior employee thereafter worked at the derailment site on an overtime basis until 1:30 a.m., April 6, 2006.

On April 6, 2006 Claimant was not permitted to return to work at the derailment site and the junior employee was again assigned to such work. Claimant was assigned work on a shop project. The junior employee worked at the derailment the entire eight-hour work day and thereafter seven hours overtime.

On April 10, 2006 the Claimant submitted the claim here at issue. The Personnel Officer for the Engineering and Mechanical Department denied the claim by letter under date of June 12, 2006. In part here pertinent, this letter reads:

You claim that on Wednesday, April 5, 2006, while covering the Bangor derailment you were displaced by a junior man after your boss Mr. Bill Mayo relieved you of your duties. The facts in this case are that the railroad's main line had been shut down because of a major derailment. The carrier was in a state of emergency because we had three boxcars in the river, rolls of paper that escaped floating in the river, the main line shut down and eventually a fire in the area of the work site. Your lack of participation in this emergency situation delayed the carrier from reaching a resolution. Mr. Patterson and Mr. Dyer who were both in Bangor at the time, witnessed you on several occasions not devoting yourself exclusively to the company's service while on duty. You were replaced by another man for not performing or assisting the carrier during this time of emergency.

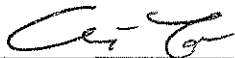
There is no question that the above letter does not set forth what work Claimant was supposed to be performing or failed to perform at the derailment site that led to the Carrier determination that he was not devoting himself to his assigned duties. Nor does the record show Claimant had been given any cautionary warning whatever that he was not properly performing his duties or had failed to comply with instructions of supervisory officials.

Carrier not having shown justification for its actions in replacing Claimant at the derailment site with a junior employee, it must be held that the Carrier deprived Claimant of a chance to do the emergency work performed by the junior employee on an overtime basis on both April 5 and 6, 2006. Accordingly, the claim will be sustained.

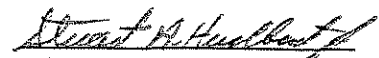
AWARD: Claim sustained.



Robert E. Peterson  
Chair & Neutral Member



Anthony F. Lomanto  
Carrier Member



Stuart A. Hulburt, Jr.  
Organization Member

North Billerica, MA

Dated Sept. 16, 2008