

PUBLIC LAW BOARD NO. 6157

AWARD NO. 1
NMB CASE NO. 1

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

- and -

St. Lawrence & Atlantic Railroad

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated Article IV of the Agreement when it failed to apply the same wage increase contained in Article III, Exhibit B - Compensation of the June 11, 1994 Agreement between the United Transportation Union and the St. Lawrence & Atlantic Railroad Company to Maintenance of Way Employees.
- (2) As a consequence of the aforesaid violation, the Carrier shall now increase by one dollar (\$1.00) per hour the Pay Classification 'A' retroactive to June 11, 1994 and payment for holidays, vacation days, sick days and safety days shall include overtime. The Carrier shall also be required to provide any additional benefits in excess of those provided in the August 4, 1993 Agreement such as Side Letter No. 2 regarding health and welfare.

BACKGROUND

The Brotherhood of Maintenance of Way Employees (BMWE) and the St. Lawrence and Atlantic Railroad Company (SLR), negotiated an agreement which became effective on August 4, 1993. That Agreement was an amendment to the previous BMWE/SLR Agreement of May 22, 1989. The 1993 Agreement provided three wage increases: forty cents (\$.40) per hour effective May 22, 1993 -- with an additional twenty five cents (\$.25) pr hour for Class "C" positions; forty cents (\$.40) per hour effective May 22, 1994; and fifty cents (\$.50) per hour effective May 22, 1995. Also negotiated in that agreement was a "savings clause." That clause

read as follows:

ARTICLE IV- EQUITY CONSIDERATIONS

In the event that an agreement is reached with another Union which contains provisions for bonus payments, wage increases, lump sum payments, Cost-of-Living Adjustments or other benefits in excess of those provided by this Agreement, the St. Lawrence & Atlantic will, upon request from the General Chairman signatory to this Agreement, apply such wage, rule and/or benefit provisions to the employees covered by this agreement provided, however, that any offsetting considerations (or equivalent offsetting considerations if appropriate) agreed to such by other Union in return for the wage and/or benefit provisions, will likewise be applied to the employees covered by this agreement.

On June 11, 1994, the SLR entered into a new agreement with the United Transportation Union (UTU) covering train and engine employees of the SLR. The prior SLR/UTU Agreement dated May 19, 1989, had provided for a crew consisting of not less than one (1) Engineer, one (1) Conductor, and one (1) Brakeman. Under that Agreement, employees on assignments with only one Engineer and one Conductor (and no Brakeman) received \$2.00 per hour in addition to the hourly rates stated. Under Article III of the June 11, 1994, UTU Agreement, covered employees received the same wage increase provided under the 1994 BMW Agreement, along with an additional short crew allowance of \$2.00 per hour and an additional dollar attributed to relinquishing the Brakeman position on train crews (Article II, Section B). As a result of the UTU/SLR Agreement, the daily rate for classification "A" employees in 1994 was \$102.56 (\$14.82 per hour) for UTU-covered employees and \$94.56 (\$11.82 per hour) for BMW-covered employees.

By letter of August 8, 1994, the BMW General Chairman requested a \$1.00 increase for all Class "A" BMW employees in accordance with the "Equity Clause" in the SLR/BMW Agreement (above). In that letter, the General Chairman noted that:

Our current Agreement provides a rate of pay for Classification "A" which equals \$94.56 for an eight (8) hour day. Yet, the daily rate of pay in the UTU Agreement for an eight (8) hour day position (assignment 513), even with the "offsetting consideration" comes to \$102.56, or \$8.00 per day higher.

He then requested that the rates in Pay Classification "A" be increased by \$1.00 per hour retroactive to June 11, 1994 and that payment for holidays, vacation days, sick days and safety days include overtime.

In its August 30, 1994 response to the BMW letter, Carrier maintained that:

The wage increase that you referenced is in fact the same for all SLR employees falling under pay classification "A" regardless of their union affiliation. Under the current UTU contract, it was agreed that the UTU would relinquish all rights to the third crew members position. The eight dollar per day disparity is payment for this position.

Following conference on the property on April 20, 1995, the matter remained in dispute. In a letter to the Carrier from the Transportation Communications Union (TCU) dated October 31, 1995, that Organization expressed a similar concern to that voiced in the BMW grievance. In that letter, the TCU protested:

The UTU fails to mention any offsetting considerations for this additional \$1.00 per hour. We also explained [to the Carrier] that this disparity in wages is contrary to the Pay Classification structure and concept established in the original agreement of May 19, 1989. At that time it was agreed that there would only be three (3) pay classifications for all crafts and pay would be consistent within each classification.

In its letter, the TCU also agreed to hold their dispute with Carrier in abeyance, pending the outcome of similar cases pending before the National Mediation Board.

OPINION OF BOARD:

There is no dispute on this record that the \$2.00 wage increase granted the UTU in its May 19, 1989 agreement with the Carrier, to compensate those crews operating with no

Brakeman, was justified. Accordingly, were the UTU Classification "A" employees receiving \$13.82 per hour, there would be no dispute. At issue here is the additional \$1.00 per hour being received by the UTU Classification "A" employees. In the 1994 UTU/SLR Agreement, the hourly rate listed for the two-man crews on assignment 513 is \$13.82; however, the daily rate of \$118.56 is actually a per hour rate of \$14.82, or \$3.00 per hour higher than BMW employees in the same classification.

The purpose of the Equity Considerations provision (Article IV) in the 1994 BMW/SLR Agreement is clear. It is intended to protect an Organization's membership from being disadvantaged if their Organization settles an Agreement with the Carrier before other organization's who also have contract negotiations pending. Such equity or "savings" clauses make allowances for those Organizations subsequently settling with Carrier, who may make some concessions to Carrier in the form of staffing or work rules changes which justify a wage rate higher than that agreed to by the Carrier and Organizations reaching agreement earlier. At the same time, they impose upon the Carrier a responsibility to justify wage differential through such concessions.

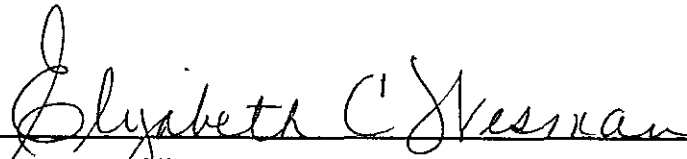
In its May 19, 1989 agreement with the UTU, the Carrier provided a \$2.00 per hour "reduced crew" allowance for those Engineers and Conductors working on a crew without a Brakeman. The intent of that addition to their hourly wage was to compensate them for extra work assumed and, commensurately, savings enjoyed by the Carrier. That allowance gave the Carrier the right to run "short crews" as needed, so long as the remaining two crew members received the reduced crew hourly increment. As noted above, the BMW did not, and does not, dispute that \$2.00 wage supplement. However, there is nothing on this record to demonstrate

that gaining permission to run "all assignments on the St. Lawrence & Atlantic Railroad . . . with an engineer and conductor," resulted in additional savings to the Carrier over and above those realized when it occasionally ran a "short crew." Objectively, the right of Carrier to use a short crew of two members at its discretion and pay a \$2.00 per hour penalty has simply become an agreed-to policy of operating all crews with only two members -- the Conductor and Engineer. *There is no evidence on this record to indicate how that metamorphosis engendered additional savings to the Carrier of \$1.00 per hour per crew member.* In the Carrier's submission to this Board, it states that the UTU represented employees "assumed greater responsibility and work load as they agreed to eliminate brakemen positions." That "greater responsibility" is not shown to be any different from the "greater responsibility" presumably assumed by the two employees on a "short crew" following the May 19, 1989 UTU/SLR Agreement.


Thus, the Board finds that the additional dollar per hour granted the UTU is, in fact, an increase in wages, not offset by additional savings over and above those savings enjoyed by the Carrier when it ran short crews after the May 19, 1989, Agreement became effective. Accordingly, the BMW Classification "A" employees are entitled to a \$1.00 per hour increase in their hourly wages, in compliance with the Equity Considerations clause in their May 22, 1993 Agreement with the SLR.

AWARD

Claim sustained.



Elizabeth C. Wesman, Chairman



Union Member

Company Member

Dated at 10/26/00

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INTERPRETATION UPON REARGUMENT

BACKGROUND

The Board's Award in this case was initially rendered on 21 January 2000. Subsequently, and prior to execution of the Award, the Carrier requested an Executive Session to protest the outcome of the Award. On August 28, 2000, the Carrier and Employee Members met with the Neutral Member, in Boston, Massachusetts. Also present at that session was Mr. Thomas Lawrence III, attorney to the Carrier.

Both Parties were given an opportunity to express their positions concerning the original Award. The Carrier maintains that the award is incorrect. It contends that the change in the United Transportation Union (UTU) "crew consist" did, in fact engender sufficient savings to justify not only the previously agreed-to \$2.00/hour per person "short crew" addition to the wages of crew members on engine crews with only an Engineer and a Conductor, but that it also realized savings of an additional \$1.00/hour per person through concessions granted by the UTU. According to the Carrier, this additional savings justifies the additional wage increase and meets the criterion set forth in the BMW's Agreement at Article IV (quoted in the Board's original Award). Specifically, in its letter of August 30, 1994, the Carrier responded to the letter of inquiry from Brotherhood of Maintenance of Way Employees' General Chairman James P.

Cassese, regarding the provisions of BMW/SLR Agreement at Article IV. That response read in pertinent part:

. . . As to your request for additional benefits [beyond the \$2.00/hour "short crew" increment], more specifically side letter #2 of the UTU Agreement, the Carrier would be willing to extend the benefits of this letter to all of its contractual employees.

The Carrier, on the other hand, would ask that you also accept the conditions set forth in A, Article 20-F, Paragraph #2.

Article 20, §F, Paragraph 2, of the UTU Agreement reads as follows:

Employees with a seniority date of January 1, 1994, or subsequent will qualify for sick days when they meet the threshold requirement for vacation.

The Carrier points as well to an exchange of letters between Mr. R. S. Onacki, then Assistant Vice President -- Operations and then General Chairman E. A. Phillips of the UTU. In his correspondence of January 18, 1995 to Mr. Phillips, Mr. Onacki asked the former to "write a brief explanation" concerning "the wage disparity that exists between SLR assignments 513 and 513A." Mr. Onacki continued:

I have tried, with little success, to explain . . . that this perceived wage variance is a result of the reduction to two men on all SLR crews. In plainest of English, the SLR bought the brakeman position. I believe this misunderstanding stems from the fact that the SLR always had the right to operate with a reduced crew, provided the regular and extra boards were exhausted. This is, as you and I are aware, not the case under the recently negotiated contract.

In his February 28, 1995 response, Mr. Phillips stated in pertinent part:

. . . Please be advised that your letter is self-explanatory and I believe you have stated the facts of our agreement and understanding just as we agreed to.

There is no question that prior to the 1994 agreement, SLR could operate with a reduced crew on certain assignments and now all assignments may be operated with a conductor and engineer. . .

This exchange is in contrast to the August 30, 1994, letter from Mr. Onacki to BMW

Chairman Cassese, in which the former implied that the source of the \$1.00/per hour differential beyond the short crew allowance was the savings garnered from the short crews. No mention was made in the correspondence between the SLR and UTU cited above of A, Article 20 §F, paragraph 2, as being the source of the differential.

Moreover, in a letter sent to Mr. Onacki by Second Vice Chairman, Mr. B. A. Winter stated in part:

. . . It is my recollection that sick days for employees hired after January 1, 1994 would not be "earned until they had worked enough days to qualify for a vacation. Once they earned their first vacation then they would henceforth have sick days each year whether they again earned vacation or not.

If this concurs with your recollection, no further correspondence is necessary.

There is no evidence in this record in either the Organization's or the Carrier's submission that suggests that Mr. Onacki ever refuted Mr. Winter's "recollection." Thus, it appears that the BMWE had already met the conditions proposed in Mr. Onacki's letter of August 30, 1994.

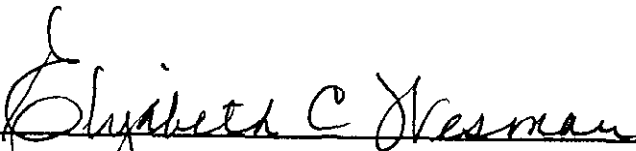
As the Board noted in its original Award:

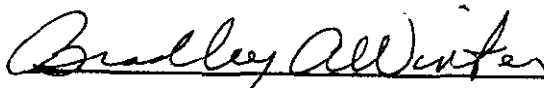
. . . There is no evidence on this record to indicate how [the metamorphosis from some to all "short crews"] engendered additional savings to the Carrier of \$1.00 per hour per crew member [beyond the \$2.00 short crew allowance]. In the Carrier's submission to this Board, it states that the UTU represented employees "assumed greater responsibility and work load as they agreed to eliminate brakemen positions." That "greater responsibility" is not shown to be any different from the "greater responsibility" presumably assumed by the two employees on a "short crew" following the May 19, 1989, UTU/SLR Agreement.

In light of the foregoing, the Board's finding in the original Award on this Board shall remain undisturbed.

AWARD

Claim sustained.


Elizabeth C. Wesman, Chairman


Union Member

Company Member

Dated at 10/26/00