

PUBLIC LAW BOARD NO. 7099

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES, DIVISION OF I.B.T.**

CASE No. 09

-And-

**UNION PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM:

The Claim, as described by the Petitioner, reads as follows:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Section Gang 4793 employee M. Sherer to perform overtime service on Section Gang 4793 territory on January 13, 13, 15, 16, and 17, 2005 and instead called and assigned Section Gang 4792 employee K. Meduna (System File UPRM-9630T/1418301).
- (2) As a consequence of the violation referenced to in Part (1) above, Claimant M. Sherer shall now be each compensated for forty-eight (48) hours at his respective time and one half rate and two (2) hours pay at his double time rate of pay.”

The Carrier has declined this claim.”

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the record of this case together with the parties' presentation, the Board finds that the claim should be disposed of as follows:

Claimant M. Sherer has established and holds seniority within the Maintenance of Way and Structures Department dating from October 30, 1973. On the date giving rise to this dispute, the Claimant was assigned and working as a Sectionman on Section Gang 4793 headquartered at Missouri Valley, Iowa working under the supervision of Manager of Track Maintenance (MTM) M. Blackley and the direct supervision of Track Foreman J. Sewell. It was established that

Section Gang consisted of the Claimant, holding seniority as a Sectionman, a Foreman, an REO Operator, a Boom Truck Operator and a Welder, and was assigned to maintain the Carrier's track and right of way between Council Bluffs, Iowa and Onawa, Iowa. Section Gang 4792 consisted of two Truck Drivers, a Foreman and a Welder. K. Meduna held seniority as one of the Truck Drivers on Gang 4792.

Severe weather occurring on January 13th through and including 17th, 2005 caused the Carrier to temporarily assign Section Gangs 4792 and 4793 to work alternating twelve (12) hour shifts (noon to midnight for Gang 4792 and midnight to noon for Gang 4793) in order to clear snow/ice from switches, change broken rails and tasks of a similar nature. The instant claim arose when the Carrier assigned Mr. Meduna, who was regularly assigned as a Sectionman Truck Driver on Gang 4792 to work overtime with Gang 4793. It is the Organization's position that the Claimant held rights to that work.

The Carrier first contends that the instant claim is procedurally flawed in that the General Chairman was not the proper Union official to handle/progress such a claim. In this regard, the Carrier asserts that the instant dispute was filed by the former Chicago & North Western Transportation Company also known as the (CNW) Brotherhood of Maintenance of Way Employees (BMWE) but whereas the dispute involves an interpretation and application of the Union Pacific (UP) BMWE Collective Bargaining Agreement (CBA) and the CNW-BMWE General Chairman Kent Bushman is not the duly authorized Representative of this CBA. The Organization disagreed, noting that this matter has already been disposed of in a recent case between UP and BMWE. Based on the record before us, the Carrier's assertion must be denied. First, the Board notes that the Carrier raised virtually the identical procedural argument in its argument before the Board the NRAB, Third Division Award 37368 where it maintained that the claim had been submitted before the wrong General Chairman, who was not a recognized representative of the Claimants. The Board easily disposed of this argument, concluding that the claim had been properly submitted, due to the fact that "[t]he August 1, 1998 Agreement mooted the Carrier's contentions otherwise." Moreover, we note that even had this not been the case, it is telling that during the on-property correspondence between the parties, the Carrier, in its December 5, 2002 letter to the Organization, noted, in relevant part, "Without agreeing in any

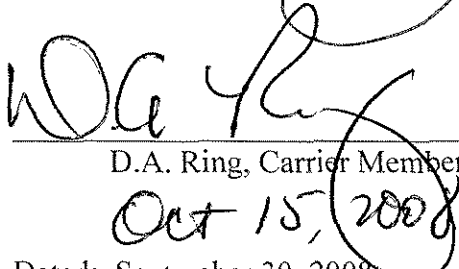
way with the positions raised in your letter, I do agree that the matter ultimately will be resolved in court.” Given this stated position by the Carrier, it can be reasonably assumed that had the Courts ruled in a manner consistent with the Carrier’s position, the procedural issue raised in this case would have been mooted. We therefore conclude that there is no basis for the Board’s dismissal of the instant claim on the basis of a procedural defect.

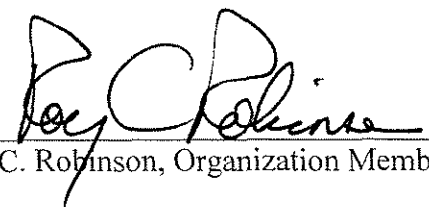
Turning now to the merits, a careful review of the record reveals that on the dates and times at issue, the Carrier required the assistance of both a Foreman and Truck Drivers on Section Gang 4793. This assertion by the Carrier was not disputed by the Organization. It is also undisputed that at all relevant times, the Claimant held seniority as a Sectionman and not as a Truck Driver, whereas Mr. Meduna, who performed duties as a Truck Driver for the dates and times at issue, did hold seniority as a Truck Driver. On the basis of this record therefore, the instant claim must be denied.

AWARD

Claim denied.



Dennis J. Campagna, Neutral Member

D.A. Ring, Carrier Member

R. C. Robinson, Organization Member

Dated: September 30, 2008

Buffalo, New York