

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 Carrier violated Article 4 of the Agreement when it unilaterally assigned Zone 3 Seniority to Work Equipment Repairman D. McCaw.**
- 2. As a consequence of the violation referred to in Part (1) above, the Carrier shall list Mr. McCaw to the System Seniority Zone as he requested on his Seniority Zone Declaration Form effective September 28, 2010. (Carrier File MW-10-11)**

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 record as presented reveals that under date of August 3, 2010 Claimant submitted a letter and Zone Declaration Form to the Personnel Officer in the Carrier's Engineering Department, requesting that under Article 4.3(c) of the rules Agreement that he be placed in a work zone identified as System Seniority Zone 2.

The Claimant received a response to his request from the Personnel Officer under date of September 28, 2010, whereby he was informed that since he had never selected a System Seniority Zone that the Carrier had already assigned a work zone to him, namely, System Seniority Zone 3.

The aforementioned September 28, 2010 Carrier letter to the Claimant reads as follows:

This letter has reference to the Seniority Zone Declaration Form I received here in my office. Seniority Zone forms are for new employees picking there (sic) work zone. Since you never picked a seniority zone we assigned one to you. A few months ago we went

back and assigned all of the Work Equipment Repairmen Seniority Zones that did not have one. We chose zones based on where you live and where you have worked in the past. In your case we assigned you to Zone 3 where you currently work and have worked in the past. In order to change you (sic) seniority zone it has to be approved by the Carrier.

Article 4, "Seniority," of the rules Agreement provides in part here pertinent the following"

4.3 Seniority Zones

(a) Prior Rights Seniority Zones

Prior Rights Zones are designated on the map attached hereto and will be listed on seniority rosters. Prior rights employees will not be required to protect their seniority outside of their prior rights seniority zones. The Carrier will not force assign prior rights employees outside their prior rights seniority zone.

(b) System Seniority Zones

Employees without prior rights and Prior Rights Employees without Divisional prior rights will place themselves in a system seniority zone as designated on the map attached hereto and will not be required to protect their seniority outside their system seniority zone. System seniority zones will be listed on seniority rosters and the Carrier will not force assign such employees outside their system seniority zone.

(c) Employees without prior rights may, at their option, elect to change their System Seniority Zones by notifying the Engineering Department Personnel Officer by December 15 of each year. It is understood that the Carrier must have sufficient forces within each zone to protect the service. Changes will be approved or denied based on the needs of service and permanent changes in residence. Changes which are approved will be effective on January 1 of the next year. Under extraordinary circumstances, Employees without prior rights may request a change in their System Seniority Zones at any time. Requests for such hardship change in System Seniority Zones will be the subject of discussion between the Carrier and the Organization. The provisions of this paragraph will also apply to Prior Rights Employees without divisional prior rights except the changes specified will be restricted to system prior rights territory.

In appeal of the Carrier denial of Claimant's request, the Organization says that it has a major problem with the Carrier assigning Seniority Zones to employees in that it asserts Article 4 is very clear that the employee is the one that picks his Seniority Zone, and not the Carrier.

The Organization says that at the time Claimant was hired in June 1999 as a Work Equipment Repairman to work out of the Work Equipment Department in Waterville, ME he was never instructed to choose a Seniority Zone as is evidenced by the Seniority Roster dated January 31, 2010 not showing him and other employees to have a designated Seniority Zone. And, in this respect, the Organization says that in submitting a request Claimant was not seeking to change his Seniority Zone, but was exercising a right to choose his Seniority Zone as outlined in Article 4.3.

The Organization further contends that Article 4.3 provides that Claimant has the right to choose a Seniority Zone at any time to protect his seniority, and that the Carrier does not the right to choose a Seniority Zone for any employee.

In defense of its actions in having assigned Claimant a seniority zone designation, the Carrier says that from June 14, 1999, the date of Claimant's hire, to September 28, 2010, Claimant never had a seniority zone designation as required by Article 4.3(b). Therefore, the Carrier says to "cure the Claimant's noncompliance with Article 4.3(b), he was designated seniority zone 3 in 2010."

The Carrier says Zone 3 was designated due to Claimant residing within that zone, it is the zone wherein he was hired, and it is the zone in which Claimant has worked in a Work Equipment Repairman position.

The Carrier also submits that the declaration form as provided by the Claimant shows a Zone 3 that is crossed out and replaced by a Zone 2 notation.

The Carrier further says that no Work Equipment Department is located in Zone 2, and that if the Claimant were permitted to change to a seniority Zone 2 designation it will undermine the purpose and intent of Article 6.4(1) in that Claimant would then not be required to protect all Work Equipment Repairman positions prior to exercising his "other than Work Equipment Repairman seniority." Therefore, the Carrier says since there is no Work Equipment Department in Zone 2, Claimant would be able to move in and out of Work Equipment indiscriminately, with no regard for the work or positions that the Carrier needs to protect.

Article 6.4(1) as referenced by the Carrier reads as follows:

1. Work Equipment Repairmen, Trackmen

Employees will be listed in the order of their seniority in the particular class. Prior rights will be designated as specified in paragraph 6.6 below. Work Equipment Repairmen may only exercise other-than-WER seniority, if unable to hold a Work Equipment Repairman position within their seniority zone.

In overall study of the record the Board is not persuaded by Carrier argument that a short time before Claimant submitted his Zone Declaration Form request that it had assigned Claimant and other employees a designated System Seniority Zone. The Carrier produced no evidentiary support documentation for its assertion.

In making the above observation the Board does not imply that there are no circumstances whereby the Carrier may assign an employee to a designated zone. It has the right to do so pursuant to certain provisions as stated in both Article 4 and Article 6.4(1).

Notwithstanding the above Findings, on the basis of the Carrier's unrefuted statement that no Work Equipment Department exists in Zone 2, we find that the Carrier had the right to disapprove Claimant's selection of that particular work zone. In this respect the Board finds noteworthy those provisions of Article 4.3(c) whereby it gives the Carrier the right to approve or deny an employee request based on the needs of service.

In view of the particular circumstances of record, it will be the decision of the Board that should Claimant not want to be assigned to Zone 3 as designated by the Carrier that he be given the right to submit another Zone Declaration Form pursuant to the hardship provisions of Article 4.3(c).

AWARD:

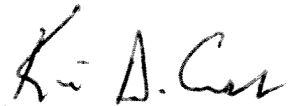
Claim disposed of as set forth in the above Findings.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Kevin D. Evanski
Organization Member

North Billerica, MA

Dated 7/27/12