# PUBLIC LAW BOARD NO. 5606

PARTIES ) BROTHERHOOOD OF MAINTENANCE OF WAY EMPLOYES
) 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 Articles 9.2 and 10 of the Agreement when it abolished four (4) work equipment repairman positions with Saturday and Sunday rest days and advertised four (4) work equipment repairman positions with other than Saturday and Sunday rest days.

2. As a consequence of the violation referred to in Part 1 above, Work Equipment Repairmen M. Young and G. Bathelder shall be compensated for the difference between work equipment repairmen straight time rate of pay and the work equipment repairmen overtime rate of pay for all hours worked on Saturday, July 10, 2010, Saturday, July 17, 2010, and Saturday, July 24, 210. The total amount owed to the Claimants is $248.16. (Carrier File MW-10-16)

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 dispute at issue involves argument much the same as that presented by the parties in Case No. 76 (Award No. 76) involving the Carrier abolishment of Work Equipment Repairmen assignments with a Monday through Friday work week, and rest days of Saturday and Sunday, and thereafter advertising new positions of Work Equipment Repairmen at Waterville, ME with, as in the instant claim, a work week of Tuesday through Saturday, with rest days of Sunday and Monday, or the assignments to which the Claimants had bid.

Case No. 76 involved a claim that a senior employee was being deprived of a call for overtime work on a Saturday as a result of another employee, who happened to be junior in seniority, working on that referenced Saturday at the straight time rate of

pay as a part of one of the newly assigned Work Equipment Repairmen positions that then had a work week of Tuesday through Saturday, with rest days of Sunday and Monday.

The instant dispute involves a claim for the monetary difference between the Work Equipment Repairman straight time rate of pay and the overtime rate of pay for the two Claimants working on the three listed Saturdays in a further protest that the Carrier violated Article 9.2 and Article 10 of the current rules Agreement when it abolished Work Equipment Repairmen that had a Monday to Friday work week, with rest days of Saturday and Sunday.

There is no question, in the opinion of the Board, that the Carrier had the right to change the assigned work weeks and rest days of the positions at issue as a result of changed operational needs, as held by the Board in the Findings of Case No. 76. It therefore follows that in posting the newly created assignments to which Claimants had bid clearly required them to work on Saturdays at the straight time rate of pay as a part of their assigned scheduled Tuesday through Saturday work week pursuant to the rules of Agreement.

In overall study of the arguments of both parties the Board finds no reason to depart from the Findings it set forth in review of Case No. 76. Accordingly, the instant claim for the difference between the straight time rate of pay and the overtime rate of pay for Claimants working on the three Saturday dates as issue will be denied for essentially the same rationale that the Board held in denying the claim in Award No. 76.

AWARD:

Claim denied.

Robert E. Peterson
Chair & Neutral Member

Anthony F. Lomanto
Carrier Member

Kevin D. Evanski
Organization Member
Dissent to Follow

North Billerica, MA
Dated 7/27/12

LABOR MEMBER'S DISSENT
TO
AWARDS 76, 80 AND 81 OF PUBLIC LAW BOARD NO. 5606
(Referee Peterson)

Award 76 is referenced as controlling in Awards 80 and 81 of PLB No. 5606. Consequently, the following dissent refers to the correspondence surrounding Award 76 of PLB No. 5606, but should be applied with full force to Award 76, 80 and 81 of PLB No. 5606.

The Majority's arrival at its decision in the subject cases is premised on facts not established in the record. While the Majority correctly stated that the Carrier must show an operational necessity for changing the assigned rest days of five (5) day positions, it incorrectly determined the Award's ultimate findings based on facts not established in the record. Thus, the findings of this Award is erroneous and should be given no precedential value.

The pertinent part of Award 76 of PLB No. 5606 findings read:

> "Upon study of argument in the instant dispute, it seems evident to the Board that the Carrier has shown a sufficient operational necessity for its changing of the work week and rest days of the positions at issue so as to provide Work Equipment Repairmen positions to work temporarily in conjunction with its track, tie, and surfacing crew rail jobs **who were already working on Saturday and Sundays**. ***" (Emphasis added)

The problem with the above-quoted findings is that none of the Carrier's track, tie, rail, or surfacing crews were working Saturday and Sunday. Even more baffling, and notwithstanding the fact the Carrier's assignment of track, tie, surfacing and rail crews to Saturday and Sunday work does not create an operational necessity that cannot be met by the work equipment repairmen Monday through Friday, nowhere was it even asserted by the Carrier that its track, tie, surfacing or rail crews were working Saturdays and Sundays. The Carrier's September 7, 2010 denial letter did assert the following:

> "With workload for the AWE Department being so high this year, Mr. Carves and Mr. Paradis needed to have the Work Equipment Department running seven days a week in order to fix all the track equipment for the rail jobs, tie jobs and surfacing crews. ***" (Employes' Exhibit "A-5")

The above-quoted statement is the only reference to seven (7) days a week during the entire handling of this case. To reach a finding that the above-cited Carrier contention is an assertion that the track, tie, surfacing and rail crews were working Saturday and Sunday simply boggles the mind. It clearly states that the Carrier Managers wanted the Work Equipment Department running seven (7) days a week in order to fix track equipment, but it absolutely does not state that the track, tie, surfacing or rail crews were working Saturdays and Sundays, or that the track equipment for the rail, tie and surfacing jobs were working seven (7) days a week. The Carrier's denial does

not provide any substantive reason that the mechanics were needed seven (7) days a week because work could not have been performed Monday through Friday (the issue that was the basis for the Organization's claim).

Even if the Majority found some ambiguity in the Carrier's above-cited statement in whether it asserted that track, tie, surfacing and rail crews were working seven (7) days a week (which it clearly does not assert), it is well established that ambiguity within letters are interpreted most favorable to the recipient. In this regard, Third Division Awards 2064 and 13126 held:

AWARD 2064:

> "*** Moreover, the letter ... was written by the Carrier, and the rule of law is well established that where a written instrument is susceptible of two meanings, it should be construed in favor of the party who did not prepare it. ***"

AWARD 13126:

> "Both parties contend that the meaning of the May 3 out-of-service notice is clear. Carrier says that it clearly states that Claimant was being held out of service only until he was found physically fit, by the Medical Examiner, to perform the duties of his position. With equal certainty Clerks say the notice clearly states that Claimant was being held out of service for 'recent conduct,' a disciplinary action requiring compliance with Rule 24 of the Agreement. We find the notice is susceptible to both interpretations. **Since the notice was drafted by Carrier and subject to both interpretations we apply the rule that under such circumstances the applicable interpretation is that most favorable to the addressee**. ***" (Emphasis added)

No matter how the issue is broached, the Majority's conclusion that the track, tie, surfacing and rail crews were working Saturday and Sunday does not flow from established facts and that is why this decision is fundamentally flawed. Thus, this award has zero precedential value. Therefore, I dissent.

Respectfully submitted,

Kevin D. Evanski
Employe Member

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**SUSTAINING AND SUPPORTING OPINION**
**AWARD NOS. 76, 80 AND 81**

**Although I believe the majority findings and award speak for itself, there are certain statements in the labor member's dissent which should not go unanswered.**

**The dissent states: "While the majority correctly stated that the Carrier must show an operational necessity for changing the assigned rest days of five (5) day positions, it incorrectly determined the Award's ultimate Findings based on facts not established in the record." The dissent then goes on to say: "The problem with the above quoted findings [of the majority members] is that none of the Carrier track, tie, rail, or surfacing crews were working Saturday and Sunday."**

**If the Organization had reason to question statements in the Carrier letter of September 7, 2010 to the General Chairman of the Organization from the Personnel Officer for the Engineering and Mechanical Department that due to the workload being high that year it needed to have its Work Equipment Department running seven days a week, or the Organization had probative support that the Carrier's track, tie, rail, or surfacing crews were not in fact working seven (7) days per week, it was incumbent upon the Organization to have expressed such argument during the handling of the claim on the property. The Organization did not do so. Nor did it even seek to do so in written or oral argument to the Board. The Organization may not therefore be heard, for the first time, to put forth such unsubstantiated argument in an attempt to buttress its contention that the decision of the majority is fundamentally flawed.**

**As the Organization stated in its ex parte submission to the Board in directing attention to the following excerpt from Award No. 73 of this PLB 5606 that proof must be beyond mere statements and allegations: "Numerous times in awards of boards of adjustment it has been held that mere assertion, self-serving declarations, and general statements are of no real probative value in consideration of a dispute."**

**Robert E. Peterson**
**Chair & Neutral Member**