

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 the Agreement when it assigned planned overtime to junior Work Equipment Repairman J. Pelotte on July 10, 2010 and junior Equipment Repairman D. Conner on July 11, 2010 instead of senior Work Equipment Repairman J. W. Maschino.**
- 2. As a consequence of the violation referred to in Part (1) above, Mr. Maschino shall be compensated for a total of twenty-five and one-half (25.5) hours at the Work Equipment Repairman overtime rate of pay. (Carrier File MW-10-12)**

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.

By letter of July 27, 2010 the Organization filed two separate claims on behalf of Claimant Maschino; one for twelve (12) hours of overtime for Saturday, July 10, 2010; the second for thirteen and one-half (13-1/2) hours of overtime for Sunday, July 11, 2010; both claims at the Work Equipment Repairman punitive rate of pay; and, both claims for an alleged lost work opportunity in a contention that employees junior in seniority to Claimant were assigned planned overtime in violation of Article 10, "Overtime," of the rules Agreement.

Paragraph 10.4(c) of Article 10, which the Organization cites in particular as having been violated, reads as follows:

(c) Planned overtime, rest day, and holiday work will be given in seniority order to available qualified employees in the territory of the work involved who ordinarily and customarily perform such work. If additional forces are needed, the provisions of (b) above will apply.

On the claim forms as filed, Claimant noted the location at which the overtime work was performed and stated the basis for the claim that he should have been called as the senior employee for the planned overtime was: "Tie handlers & log truck running out ties, Repairman standing by in case of breakdown." Further, in identifying each of the junior employees who worked on the dates of claim, Claimant wrote that each of the junior employees was "asked to work this day to be there in case of break downs."

In initial denial of the claim, the Carrier stated in part the following:

You state in your claims that junior men were asked to work planned overtime in case of breakdowns in the Tie Job and you were not. On July 10, 2010 you state the junior man as J. Pelotte and on July 11, 2010 the junior man was D. Conner. Both claims state that Ted Carves (G.M. of A.W.E.) ordered the work to be performed.

I spoke with Mr. Carves on September 23, 2010 in regards to both of these claims. Mr. Carves stated that he had never ordered this work to be performed. In fact Mr. Carves was off of work on July 10th and 11th. Due to insufficient information these claim are deemed invalid.

For the reasons above, the claim is denied.

In response to the above Carrier letter of denial, the Organization in part here pertinent said:

The Organization would like to point out that Mr. Carves is the General Manager of Automotive Work Equipment Department. Mr. Carves gave the final approval to the Local Work Equipment Supervisor on Friday, July 9, 2010 for the two (2) junior men to work on the dates claimed in the original time claim.

Attached is a statement by the Claimant regarding who approved the overtime assignment.

In addition, the Supervisor of the Work Equipment Repairman for the facility Headquartered at Waterville, Maine, [is] responsible for assigning overtime in Seniority order as outlined in Article 10.4(c) of the current Agreement between the parties.

As for information, attached is a Seniority Roster for the Work Equipment Repairman. Mr. Joseph Maschino Seniority Date is May

24, 1979. Mr. David Conner Seniority date is November 4, 1991 and Mr. Jeremy Pelotte Seniority Date is January 1, 2003.

The Carrier reply to the above referenced Organization letter reads in part as follows:

As discussed on January 6th, the Claimant worked in the shop all week. In contrast, Mr. Pelotte and Mr. Connor worked out of the shop all week, repairing the equipment that is the subject of this claim. (See attached records.) Based on the particular facts of this case, Article 10.4(c) should not apply. Article 10.4(d) is applicable, given the fact that these two Work Equipment employees were continuing and completing repairs to the same Work Equipment that they had worked on all week.

The Carrier's above referenced Article 10.4(d) reads in part here pertinent as follows:

(d) Planned overtime, rest day, and holiday work which is a continuation of a work project of a specialized nature, such as tie and surface, rail laying, construction, clean-up, etc., will be given to the specialized crew ordinarily doing this type of work during the regular assigned work week, with the members of the specialized crew being utilized in the order of their seniority, if available. . . .

In the opinion of the Board, the Carrier has failed to show probative support for its defensive argument. In initial denial of the claim, the Personnel Officer in the Engineering Department asserted that he had spoken with the General Manager of Automotive Work Equipment Department about the claim, and was told by the latter that he had never ordered this work to be performed. No evidentiary statement from the General Manager was placed into record. Moreover, even if it was to be assumed, *arguendo*, that the General Manager had never ordered the work to be performed, the fact remains that the work at issue was performed on both dates of claim. While the Personnel Officer said the claims were deemed invalid due to insufficient information, study of the claim forms as submitted by the Claimant appear to fully respond to all eight questions listed on the Carrier claim form. Claimant even added a comment to the form that reads: "We now have men working bid jobs with weekend coverage, why have men on overtime working??" If the information provided was insufficient, it seems to the Board that the Claimant should have been apprised as to the nature of the information that was lacking.

The Board is also not persuaded by argument that since Claimant worked in the shop all week and Messrs. Pelotte and Conner worked out of the shop all week that this circumstance may necessarily be viewed as reason for application of Article

10.4(d), or, principally, the continuation of a work project of a specialized nature as concerns use of the latter two employees for the overtime work at issue. Nothing of record shows, as inferred, that Messrs. Pelotte and Conner "were continuing and completing repairs to the same work equipment that they had worked on all week." To the contrary, the claims as submitted by Claimant contain the unrefuted statement that Messrs. Pelotte and Conner were "standing by in case of a break down" of equipment and that each had been "asked to work this day to be there in case of break downs." Thus it seems to the Board that there was no repair work of a continuing or specialized nature and since the three employees were like trained and experienced Work Equipment Repairmen that Claimant should have been called for the planned overtime work as the senior employee.

In the light of the above considerations and the particular circumstances of record the claim will be sustained.

AWARD:

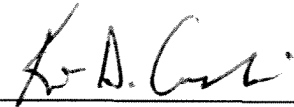
Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Kevin D. Evanski
Organization Member

North Billerica, MA

Dated 7/27/12