

PUBLIC LAW BOARD NO. 5418

Case No. 50

Award No. 50

PARTIES

to

DISPUTE:

Brotherhood of Maintenance of Way Employees
-and-
Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim and grievance on behalf of Trackmen, Richard Breor, Jr. and Lloyd Sanderson. This claim and grievance is brought about due to the Carrier’s violation of their rights under the current agreement between the BMWE and ST specifically, but not limited to Article 8-Filling Vacant Positions.”

FINDINGS: Facts involved in this dispute show that during the claim period (September 10 to October 12, 2001) the claimants’ held trackmen positions headquartered at East Deerfield. During this period, two employees (Messrs. Lorion and Ingles) from the Fitchburg Maintenance Crew were assigned to work for 25 days with Zone E Tie Crew.

The Organization alleges the Carrier violated Article 8 (Filling Vacant Positions) of the CBA, when it failed to properly advertise two positions on the Zone E Tie Crew. They contend the claimants could have bid and been assigned to the Tie Crew and would have been paid a higher rate of pay as an Equipment Operator, in addition to being paid a per diem for traveling to the worksite. They assert the Carrier knew that extra help was required on the Tie Crew, and that such vacancies should have been advertised in accordance with Article 8.

Article 8.3 (a) states:

“Positions subject to advertisement will be created permanent positions and vacancies expected to be more than thirty (30) days. Such positions will be bulletined during the first advertisement period following the vacancy.”

The Carrier asserts that Article 8 does not apply to the facts of this case. They contend there were no vacant positions nor were there any new positions created in the Tie Crew. They simply

utilized Messrs. Lorian and Ingles to supplement the Tie Crew which is clearly permissible under the current agreement. They also assert there is no agreement support to the Organization's contention that the claimant's would have been entitled to per diem payments.

Upon review and analysis of this record, we find the Organization has made numerous conclusionary allegations in this case, for which we find no agreement support. Given the facts presented, we conclude the Carrier wasn't compelled to establish the positions as claimed by the Organization. Therefore, we find the Organization failed to satisfy its burden in this case. Thus, the claim is denied.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


T. W. McNulty
Carrier Member


B. A. Winter
Organization Member

Dated: 3-22-04