

**PUBLIC LAW BOARD NO. 5418**

**Case No. 63**

**Award No. 63**

**PARTIES**

to

**DISPUTE:**

Brotherhood of Maintenance of Way Employees

-and-

Springfield Terminal Railway Company

**STATEMENT OF CLAIM:**

“(a) Carrier violated the rights of Claimant Thomas Richardson under the provisions of Articles 1, 5 & 10 of the current agreement between the BMWWE and ST when beginning on December 17, 18, 24, 25, 26, 27 & 31, 2005 and on January 1, 2, 7 & 8, 2006 by assigning the work of the Claimant for which he previously performed on overtime to Managers not covered by the Scope of the BMWWE Agreement. All other claim dates related to this case are held in abeyance until the outcome of this case is resolved.

(b) Claimant Richardson shall be compensated all hours worked by the Managers who worked his position on his rest days for this violation.”

**FINDINGS:** This dispute centers on the Carrier assigning non-agreement employees to work at their East Deerfield Waste Water Treatment Plant (WWTP) on the dates cited (Claimant’s Rest Days and Holidays) in lieu of the claimant, who is the incumbent of the WWTP operator’s position.

The Organization undisputedly states that the position of WWTP operator has fallen under the scope of the BMWWE since 1995. They point out that the plant operator must be licensed by the State of Massachusetts and that the claimant has the required license and has performed said work on his rest days and holidays until December 2005. They assert that because the Carrier did not want to pay any more overtime to the claimant, they assigned the rest day and holiday work to non-agreement personnel. The Organization contends that such action is a clear violation of their agreement which resulted in the loss

of work opportunity for the claimant.

Conversely, the Carrier argues that the record in this case suggests that there are circumstances unique to this claim that warrants some elaboration. They contend that the WWTP operator's position has been the source of contention ever since the work was granted to the BMW. They point out that the WWTP requires additional coverage and they have repeatedly advertised for another position but no BMW represented employee has ever applied.

The Carrier also points to the fact that pursuant to a Public Law Board Award, they are required to compensate an employee for initially obtaining the required license, as well as the time involved in attending classes and other related expenses, however, notwithstanding this incentive, the BMW represented employees seem disinterested in applying for the additional position.


In addition, the Carrier asserts that non-agreement employees have performed such work, without claims being submitted, when the claimant is not available due to Vacation, Sickness and Personal Days, thus they contend the Organization has allowed Managers to cover the work.

After due study of the entire record, including the parties' submissions and arguments presented in support of their respective positions, the Board cannot sustain the Carrier's position in this case. The Board is keenly aware of the Carrier's diligent effort to secure an applicant for the additional position from the ranks of the BMW. However, the Board notes the record is devoid of any attempt by the Carrier to secure licensed personnel from outside the Company, which would most likely resolve their dilemma. While we recognize


the Carrier's frustration over the facts and circumstances brought forth in the record, the Board must nonetheless address the applicable rules of the Agreement. Therefore, in light of the clear usurpation of work and the loss of work opportunity, we deem the agreement was violated and an award favorable to the claimant must be made, hence the claim is sustained.

The Carrier is directed to implement the Award within 30 days of receipt.

**AWARD:** The claim is sustained.

  
Francis J. Domzalski  
Neutral Member

  
A. F. Lomanto  
Carrier Member

  
B. A. Winter  
Organization Member

Dated: 5-22-2007