

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5512

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NORTHEAST CORRIDOR

AWARD NO. 8

System Docket No. NEC-BMWE-SD-3243

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier advertised and awarded a Lineman/HRO position at Downingtown, Pennsylvania to Claimant A. Porreca but beginning March 17, 1993, the Carrier failed and refused to compensate the Claimant in accordance with the May 19, 1976 Letter of Agreement.

2. As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate the Claimant and any other employee who occupies said position for thirty (30) minutes at the time and one-half rate of pay beginning March 17, 1993.

FINDINGS

The Claimant was assigned on a gang as one of two employees in the position of Lineman/HRO [Highway/Rail Truck Operator]. Payment for this position is covered in the following Memorandum of Agreement:

Effective May 19, 1976, it is agreed: Drivers of rail-highway platform inspection trucks must be Class A qualified linemen. They must be qualified on the operation of the truck, the Rules for Conducting Transportation, and the physical characteristics of the electrified territory within his seniority district. He will operate the truck and perform such other duties as may be assigned by the foremen of the gang. The operator of the truck will be paid a differential of 12 cents per hour over and above the hourly rate of a Class A qualified lineman. He will be allowed thirty minutes at punitive rate each day over and above the normal time worked by the gang to encompass the securing, servicing and parking of the truck outside the hours worked by the balance of the gang.

The Claimant did not operate the truck each day, since there was another Lineman/HRO in the gang who was regularly assigned to do so. According to the Organization, the Claimant and others similarly situated had been receiving for each work day both the 12-cent-an-hour differential payment, and the 30-minute allowance at the punitive rate, without regard to whether they actually operated the truck and/or were responsible for "securing, servicing and parking" of the truck.

On May 19, 1976, the Carrier stopped paying the 30-minute allowance to the Lineman/HRO who was not operating the truck, contending that such payment was only for providing, outside of regular working hours, the services specified in the Memorandum of Agreement. The Carrier stated that this limited method of payment was continuously in effect in the New York Division, although not, as relevant here, in the Philadelphia Division. Internal "rate sheets" were provided during the claim handling procedure in an effort to substantiate this method of payment in the New York Division.

The Organization argues that the Memorandum of Agreement provides for two types of additional payments to "the operator of the truck" and that the Carrier "cannot be allowed to dissect" the Memorandum "and chose which portion to comply with and which portion to ignore".

There is some logic to the Carrier's position that the 30 minutes' pay is for performance of a specific duty, and that payment to a Lineman/HRO is contingent on actual performance. However, this is not the only meaning which can be drawn from the provision as written. The Organization has established that Linemen/HRO on the Philadelphia Division, regardless of whether or not operating the truck, have been paid the additional 30 minutes. Further, the record shows that the Carrier continues to pay the "primary" Lineman/Operator the 30 minute-allowance even when the truck is not operated, as indicated in the Division Engineer's claim response of May 20, 1993.

The final sentence of the Memorandum is sufficiently ambiguous to require that the interpretation established on the Philadelphia Division not be unilaterally discontinued. If clarification of the Memorandum is required, this should be undertaken through negotiation.

A W A R D

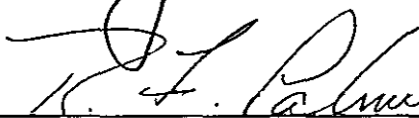
Claim sustained. The Carrier is directed to make this Award effective within 30 days of the date of this Award.



HERBERT L. MARX, Jr., Chairman and Neutral Member



JED DODD, Employee Member



RICHARD F. PALMER, Carrier Member

NEW YORK, NY

DATED: May 22, 1995