

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Equipment Operator B. Jordan to move surfacing equipment from Zone 4 to Zone 3 on December 11, 1999, instead of assigning Equipment Operator P. G. Tanguay, Jr.
2. As a consequence of the violation referred to in Part (1) above, Machine Operator P. G. Tanguay, Jr. shall be allowed fourteen (14) hours of pay at the equipment operator's time and one-half rate. (Carrier's File: MW-00-13)

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 Organization contends that Agreement rules were violated when the Carrier assigned Equipment Operator Jordan, who is headquartered at Danville Junction, Maine, instead of Claimant (Equipment Operator Tanguay), headquartered at Rigby, Maine, to move surfacing equipment from Rigby to Shawmut, Maine, following a train derailment at the latter mentioned location.

Both parties cite Answer A-1-(b) of "Agreed-upon Questions and Answers Pursuant to the ST/BMWE Agreement of April 16, 1995" in support of their respective positions in the dispute. Question 1 and Answer A-1-(b) read as follows:

Q1. How is Overtime (Article 10) to be assigned?

* * * * *

A1. (b) Calls outside of the regular assigned work period will be given to the crew regularly assigned to inspect the applicable territory. If additional forces are needed, preference will be given to members of other

crew(s) assigned to the applicable territory, respecting seniority within the required classifications(s). If more additional forces are needed, they will be obtained from the Maintenance Crews nearest to the location of the work, again respecting seniority within the required classification(s). It is understood that in the application of the above, all forces within the System Seniority Zone which contains the work involved will be used before other forces are called.

It is the position of the Organization that the work of moving the surfacing equipment that was assigned to the surfacing gang from Rigby to Shawmut belonged to the territory or seniority zone from which the work commenced. In this respect, the Organization says that Claimant, an Equipment Operator who had bid for and been assigned to the Rigby Headquarters, was contractually entitled to the overtime work.

The Organization argues that just as another Equipment Operator (Mr. Maschino), who, like Claimant, had bid for and been assigned by bulletin to the surfacing crew headquartered at Rigby, was called to move one of two surfacing machines to Shawmut, that Claimant should also have been called for the overtime work. Thus, the Organization maintains that the terms of A-1-(b) were violated to the detriment of Claimant when the Carrier called Equipment Operator Jordan, who, as stated above, was assigned to a different territory and headquarters' point (Danville Junction), to operate the surfacing equipment from Rigby to Shawmut.

The Carrier argues that since movement of the surfacing equipment required it traverse three separate territories, that it complied with the procedures of A-1-(b) in selecting two senior Equipment Operators from "within the territories over which this equipment operated," or, namely, Mr. Maschino and Mr. Jordan, who are more senior to Claimant on the System Equipment Operator Seniority Roster.

In the opinion of the Board, the "work" that gave initial application to A-1-(b) in this dispute was that of there being a need to place into service surfacing equipment assigned to crews headquartered at Rigby. It was this circumstance, and not the fact that the surfacing equipment had to move through another zone or zones to reach Shawmut, albeit an essential part of the work performed, that governed who was to be called or assigned to perform the work.

Accordingly, the Board finds that Claimant should have been called for the work at issue since it is evident that the surfacing equipment needed at the Shawmut derailment site was assigned to and located in territory that is a part of Claimant's seniority zone and headquarters location, Rigby. That the equipment had to move through another zone or zones in order to reach the derailment site is not viewed as having extended to the Carrier a right to have assigned an employee from one of the other zones to perform the overtime work. We say this in a belief that the object of A-1-(b) appears to be an intention that an employee have a right to perform work that falls within or originates out of his or her

seniority zone and headquarters location, and that employees outside what is termed "the applicable territory" be used only if it is determined that additional forces are needed.

The Board notes in study of the record that the Carrier highest designated appeals officer in denial of the claim asserted that the derailment constituted an emergency, and that it "needed to act quickly." The Board recognizes that Q&A 1, in paragraph (e), provides that in cases of emergencies that a deviation from prescribed procedures is permissible. However, this rule also states that the Carrier will endeavor to comply with the procedures set forth in A-1-(b), "unless those procedures would delay the resolution of the emergency."

As the Organization points up, numerous awards of boards such as this have held that a derailment, *per se*, is not necessarily an emergency. Moreover, the record does not show the Carrier to have presented probative documentation to establish the emergency nature of the derailment and thereby need for a deviation from prescribed procedures. Nor does the record show, even it was to be assumed, *arguendo*, an emergency existed, how it was determined that Mr. Jordan was able to more promptly respond to Rigby to handle the surfacing equipment as opposed to Claimant. The only reason given by the Manager Engineering Personnel & Safety for denial of the claim was the following:

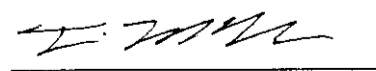
Both Mr. Jordan and Mr. Maschino were called to move this equipment. Therefore, I can see no basis to your claim for fourteen (14) hours overtime as an E.O. on December 11, 1999 and your claim is denied.

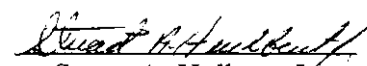
The Board finding the actions of the Carrier in calling Mr. Jordan instead of Claimant for the overtime work at issue to have been in violation of Agreement rules, we will direct that the claim be sustained.

AWARD:

Claim sustained.


Robert E. Peterson
Chair & Neutral Member


Timothy W. McNulty
Carrier Member


Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated Feb 6, 2002