

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 a track foreman to install new station signs at Newport Junction and East Newport on Thursday, May 23, 2002, instead of furloughed Bride and Building (B&B) Mechanic J. C. Hafford.**
- 2. As a consequence of the violation referred to in Part (1) above, furloughed B&B Mechanic J. C. Hafford shall be allowed two hours' pay at the B&B mechanic's straight time rate. (Carrier File: MW-02-35)**

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 primary issue in this case is whether existing rules of agreement were violated when the Carrier had a Track Foreman install signs to identify station locations at Newport Junction and East Newport, both in Maine. The dimensions or size of the signs were not made a matter of record. It is undisputed, however, that the signs were not for the purpose of identifying the two locations as a public or passenger station, and that the signs were placed onto the side of an existing building at each of the locations.

It is the position of the Organization that Articles 2 and 5 of the current Rules Agreement were violated when the Carrier failed to call and utilize a furloughed Bridge & Building (B&B) Mechanic and instead used the Track Foreman (who is also represented by the Organization) to perform the work at issue.

Provisions of the two rules, as cited by the Organization, read as follows:

Article 2. Intra-Craft Jurisdiction

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2.3 Assignment of employees pursuant to this Article 2 will not constitute a basis for any claim by other employees, provided no employee of the affected class or craft is furloughed.

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Article 5. Seniority Classes

The seniority class and primary duties of each class.

5.1 Track Department

1. Foremen: Direct and work with employees assigned under their jurisdiction.

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5.2 Bridge and Building Department

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4. Bridge and Building Mechanics:

Construct, repair, dismantle, inspect and maintain bridges, buildings and other structures.

In its denial of the claim, the Carrier alleges that the work claimed has never belonged exclusively to B&B Mechanics.

Contrary to Organization argument, the Carrier says that Article 2.3 has no application to the dispute in that it concerns a person of one classification performing work that is associated with another classification if someone falling under that protected class is furloughed. In the instant case, the Carrier says that work involving in the installing of signs at various locations on its property is not work that is solely associated with the B&B Department, and the fact that the Claimant was furloughed therefore has no application to the dispute.

The Carrier also maintains that there was no violation of Article 5. It submits that Article 5 outlines the seniority class and primary duties of each class, and, in this regard, clearly states that the primary duty of a Track Foreman is to direct “and

work with” employees assigned under their jurisdiction. And, as concerns the primary duties of Trackmen, with whom Track Foremen work, the Carrier submits that Rule 5 describes those duties to “construct, dismantle, maintain, repair and inspect track and appurtenances thereto.” The Carrier here argues that a station sign is a track appurtenance, and that Track Department employees have, in the past, affixed signs such as those involved in the instant dispute to appurtenances, or, as here, buildings alongside tracks.

An “appurtenance” is described in Webster’s Dictionary to be:

That which belongs to something else; adjunct; appendage; an accessory; something annexed to another thing more worthy; in common parlance and legal acceptance, something belonging to another thing as principal and passing as incident to it, as a right of way or other easement to land, a right of common to pasture, an outhouse, barn garden, or orchard, to house or message.

Both parties contend past practice supports their respective position. In this respect, the Organization asserts that the work at issue “has historically and customarily been done by the B&B Mechanics.” It also alleges that “the Carrier has already paid claims due to the same rules violation.” However, the Organization presents no probative documentation in support of its contention. The Organization also fails to identify the facts and circumstances of past incidents that it contends involved “the same rules violations.”

In support of its argument on past practice the Carrier directs attention to an internal memorandum from the Supervisor of the B&B Department, who, it states, has 30 years service in that department. The memo reads:

I understand that we have received a time claim from a laid off Bridge & Building mechanic in Maine. The claim for an unknown amount of time was for a trackman installing station signs at Newport Jct. and East Newport Maine. The purpose of station signs is to help regulate the movement of trains. The same would be said for mile posts, signal numbers, flange signs, x-buck signs, close clearance signs, yard limit signs, and interlocking signs. The above mentioned signs have been installed by Track, Bridge & Building, and Signal crews. No one contract will specify any particular signing package to be installed by any particular craft. In my opinion, and going with past practice, either Track or Bridge & Building crews could do this work.

The above statement is dated November 20, 2003. It was not presented to the Organization during the handling of this case on property, or prior to the date that the parties agreed to add the case for determination by the Board, October 15, 2003.

This belated statement, notwithstanding that in denial of the claim on the property that the highest appeals officer stated in a letter of October 1, 2003: "Additionally, the past practice has been mixed with both Track and B&B employees performing this type of work in the past. Should the Organization choose to progress this Claim, the Carrier will provide statements to support our positions."

Although both parties assert a past practice in support of their respective positions, it is evident that neither side has presented any actual proof besides uncorroborated statements.

Notwithstanding the above observations, it is elementary that the one making a claim bears the burden of proof to show a violation of agreement rules. Thus, as concerns the subject of the instant dispute, the Organization must show by probative support that contractual language clearly granted B&B Mechanics, as part of the maintenance of buildings, the exclusive right to all work involving the placement on a building of a sign of any sort conveying information of some kind in preference to any other employee or person. As boards such as this have many times held, mere unsupported allegations do not constitute proof.

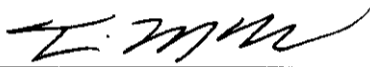
Under the circumstances, the instant claim will be denied. This denial shall be without precedent should a future like dispute arise wherein the parties fully set forth supportive argument relative to their respective positions, especially as concerns contentions of an established past practice.

AWARD:

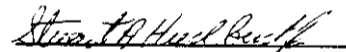
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated February 5, 2004