

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 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 allowed Mr. Brent C. Randall to displace the Claimant, S. Richards, in violation of the seniority rule.**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant S. Richards shall now be compensated as outlined in the original claim, dated February 7, 2003, from Assistant General Chairman—BMW John P. Tracy. (Carrier File MW-03-14)**

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 claim at issue involves to a certain extent the facts and circumstances that were before the Board in previously issued Award No. 27 (Case No. 27) wherein it was held that the Carrier had violated Agreement rules when it permitted an improper seniority displacement to take effect for the position of a Trackman on the Rigby I&R Crew on January 4, 2003.

In sustaining the claim in Award No. 27 this Board held in part as follows after relating the facts of record:

Turning to the instant dispute, and who, the Board finds, has a right of seniority to the position of Trackman on the Rigby I&R Crew. This is a position within Eastern District Prior Rights Division 7. Neither Claimant Maxwell nor Mr. Blanchard holds any prior rights on Division 7. Both employees do, however, hold prior rights seniority on the Eastern District. Mr. Maxwell, the senior of the two employees, has, or should be recognized as having, an Eastern District Prior Rights date of May 28, 1974; Mr. Blanchard has, or should be

recognized as having an Eastern District Prior Rights date of March 26, 1987. Thus, as concerns the two individuals, the Board finds that Claimant Maxwell, by reason of his higher standing on the Eastern District Prior Rights roster, has a seniority right to hold the Rigby I&R Trackman position over Mr. Blanchard.

The senior employee and claimant in Case No. 27 (Mr. Maxwell), when displaced by the junior employee (Mr. Blanchard), in turn, displaced the Claimant in the instant case (Mr. Randall), who was working a Foreman/Welder position in Old Town, Maine. The latter, Claimant Randall, then displaced Mr. Richard (Claimant in Case No. 28) from an Equipment Operator position in Lincoln, Maine.

Basically, it is the position of the Organization that since the displacements would not have occurred had the Carrier not violated the Agreement in the first instance, and Claimant Randall was placed in a worse position, that he is entitled to the difference in pay and difference in mileage and travel time account the changed work location. That is, \$4.40 per day in pay; 20.72 per day in mileage; and, 42.35 per day in travel time.

It is the position of the Carrier that the displacements here at issue were properly done in accordance with the current Agreement; Claimant is not entitled to travel time and mileage since he chose to make the displacement; and, as set forth in the decisions of numerous prior boards, it not be infinitely penalized for a single mistake arising out of an initial displacement. In particular, the Carrier directs attention to Award No. 11 of PLB No. 6214, which award made reference to prior awards, stating in part:

We find the numerous awards cited by Carrier in this context to be directly on point and binding on this Board. Among them are Award No. 119 of Public Law Board No. 1036 (Sembower), which addressed a similar fact pattern as follows:

Claimant was second out . . .

. . . this Board has followed the doctrine of S.B.A. No. 379, Referee Stone, in its Award No. 472, that if there would be any valid claim it would belong to Conductor Rose rather than the Claimant or to others under a so-called "chain reaction" effect, because it is difficult or impossible to tell how far such a delayed reaction would be felt or where to draw the line. For these reasons, the claim must be denied.

The Organization says that the record does not show a chain of displacements, but rather a circumstance here that involves four employees. And in this respect, the Organization cites Award No. 29625 of the Third Division, NRAB, whereby it was held in part as follows involving the claim of three claimants, two of whom lost work, for unnecessary travel and lodging expense due to an initial displacement by an employee who did not hold seniority for the move at issue:

The Board determines that the Carrier must accept responsibility for the chain of displacements. The Carrier retains direction of where the employees are assigned. This responsibility cannot be shifted to the employees.

Although the Organization cites several other awards, study of those awards by the Board does not find them to support the granting of a make whole allowance for other than the employee initially improperly displaced.

As noted above, argument and decisions of boards of adjustment have gone both ways in resolution of the issue in dispute. In the Board's view we believe the rule of reason should prevail. Thus, in the absence of a clear rule provision to the effect that all persons affected by a displacement made or permitted in error are entitled to be made whole, we find it would be unreasonable to hold there be a pyramiding of penalty payments because an initial displacement was subsequently determined to have been in violation of applicable agreement rules. The Board will, therefore, hold with the preponderance of the awards of record and deny the instant claim as being without merit or agreement support of record.

AWARD:

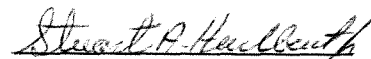
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated 10/23/06