

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 allowed a junior employee to displace Mr. John H. Maxwell on January 4, 2003 from the I&R trackman position headquartered in Rigby Yard, South Portland, Maine.**
- 2. As a consequence of the violation referred to in Part (1) above, Mr. John H. Maxwell shall be allowed:**

304 miles per day at the corporate rate of \$.28 per mile (\$85.12 per day) mileage, plus five hours per day at the overtime rate of pay.

304 miles X 15 days (4560 miles @ \$.28 -- \$1,276.80) and \$18.82 x 1.5 x 5 hrs. x 15 days (\$2,117.25).

Total wages lost and travel plus mileage for the month of January 2003 is \$5,012.93.

And continuing until the violation ceases. (Carrier File MW-03-15)

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.

In the instant claim the Organization contends that the Carrier violated Agreement rules when it permitted Claimant Maxwell to be displaced by Trackman Blanchard for a position as Trackman on the Rigby I&R Crew on January 4, 2003.

The Carrier maintains that the claim should be denied in a contention that the position of the Organization in this case is opposite the position it had taken in a

claim filed by Mr. Blanchard, wherein it was claimed that Mr. Blanchard had been denied a right to displace Mr. Maxwell on the same position on December 20, 2002. Although the Carrier initially denied Mr. Blanchard's requested displacement, it reversed its decision and allowed the displacement effective January 4, 2003. The Carrier denied the appeal of Mr. Blanchard for time lost under date of February 28, 2003, and again at an appeals conference on June 5, 2003. However, on October 7, 2003 the Carrier granted Mr. Blanchard 14 days compensation in settlement of his claim for time lost during the period December 20, 2002 to January 4, 2003.

Contrary to Carrier argument, the Organization maintains that it has not changed its position, and that the Carrier is "trying to set the Organization up by saying that the Organization is arguing both sides of the fence" when it is not. The Organization says that it had maintained at the June 5, 2003 conference that Mr. Blanchard did not have the seniority to displace Mr. Maxwell in the first place, and that the Carrier interpretation of the prior rights seniority rules was wrong. As concerns disposition of the time claim of Mr. Blanchard, the Organization says that since the Carrier had reversed its initial decision and allowed Mr. Blanchard to displace Mr. Maxwell, that Mr. Blanchard was therefore entitled to the 14 days of time lost for the period of time that the Carrier had not allowed Mr. Blanchard to displace Mr. Maxwell. Further, the Organization says that in the time frame between June 5 and October 7, 2003 that it had appealed all claims pertaining to this issue. In this respect, the Organization asserts that it has always argued in conferences that Mr. Blanchard did not have the seniority to displace Mr. Maxwell and that the Carrier's interpretation of prior rights was wrong.

In the opinion of the Board, overall study of the record supports the conclusion that a great deal of confusion has existed and continues to exist concerning the meaning and intent of agreement rules involving prior rights seniority. Both parties offer differing views on negotiations covering adoption of past and current rules on the subject. A major difference in arguments of the parties appears to concern the fact that in the Agreement effective April 16, 1995, separate paragraphs addressed the retention of divisional prior rights, retention of former Maine Central system prior rights, new system seniority rights, establishment of prior rights for new employees, and that employees not be force assigned outside their prior rights seniority zones. This agreement language reads:

Article 4. Seniority

4.2 Employees' seniority will consist of Prior Rights and System Rights

(a) Prior Rights Seniority

- (1) Employees who held Maine Central Railroad Company Divisional Prior Rights will, on the**

effective date of this Agreement, retain those Divisional Prior Rights and be designated, by Division, as Springfield Terminal East District Prior Rights Employees.

- (2) Employees who held Maine Central Railroad Company System Prior Rights will, on the effective date of this Agreement, retain those rights and be designated as Springfield Terminal Eastern District Prior Rights Employees.
- (3) Employees now holding Boston and Maine Corporation Prior Rights will, on the effective date of this Agreement, be designated as Springfield Terminal Western District Prior Rights Employees.
- (4) Employees now holding Springfield Terminal Prior Rights will, on the effective date of this Agreement, be designated as Springfield Terminal Prior Rights Employees.

(b) System Seniority

All Employees will have the right to work throughout the Springfield Terminal Railway Company system. System Seniority will be based upon seniority in the applicable class.

4.3 Seniority Zones

(a) Prior Rights Seniority Zones

Prior Rights Seniority Zones are designated on the map attached hereto and will be listed on seniority rosters. Prior rights employees will not be required to protect their seniority outside of their prior rights seniority zones. The Carrier will not force assign prior rights employees outside their prior rights seniority zone.

(b) System Seniority Zones

Employees without prior rights and Prior Rights Employees without Divisional prior rights will place themselves in a system seniority zone as designated on the

map attached hereto and will not be required to protect their seniority outside their system seniority zone. System seniority zones will be listed on seniority rosters and the Carrier will not force assign such employees outside their system seniority zone.

- (c) Employees without prior rights may, at their option, elect to change their System Seniority zones by notifying the Manager of Engineering Personnel by December 15 of each year. Such change will be effective on January 1 of the next year. Under extraordinary circumstances, Employees without prior rights may request a change in their System Seniority Zones at any time. Requests for such hardship change in System Seniority Zones will be the subject of discussion between the Carrier and the Organization. The provisions of this paragraph will also apply to Prior Rights Employees without divisional prior rights except the changes specified will be restricted to system prior rights territory.

END OF ARTICLE

The current Agreement, effective May 8, 2003, as concerns Eastern District prior rights employees, reads as follows:

Article 4. Seniority

4.2 Employees' seniority will consist of Prior Rights and System Rights

(a) Prior Rights Seniority

- (1) Employees who held Maine Central Railroad Company Divisional Prior Rights will, on the effective date of this Agreement, retain those Divisional Prior Rights and be designated, by Division, as Springfield Terminal East District Prior Rights Employees. Employees so designated will maintain Springfield Terminal East District Prior Rights in addition to Divisional Prior Rights.

The Board is not persuaded by Carrier argument that the former Agreement did not provide that an employee who held divisional prior rights would also retain Eastern District prior rights. It seems to the Board that the language set forth in both agreements intended that employees who retained divisional prior rights also

retained Springfield Terminal Eastern District prior rights. The current agreement appears to have only clarified this matter in stating: "Employees so designated will maintain Springfield Terminal East Prior Rights in addition to Divisional Prior Rights." In many respects it would seem absurd to conclude that an employee with 13 less years of service than another employee was extended by agreement the right to a super seniority date on a prior rights roster. We say this because seniority, in most cases, is looked upon as a valuable property right that is earned by years of service, and, in many instances, that the extent and retention of seniority affects a work location, working conditions, and the income of an employee.

Notwithstanding the rationale offered by each party for its position, the Board finds reason to believe it was intended under agreement rules that, in addition to system-wide seniority, employees who held seniority on the separate properties would retain prior rights seniority to positions called for work on their prior properties, now identified as the Eastern District and the Western District. Further, agreement language supports a finding that employees who previously worked on the Eastern District, in addition to retaining prior rights for work in the Eastern District, have prior rights seniority for work on the former and separate divisions of the Eastern District, namely, Eastern District Prior Rights Division Nos. 1, 2, 3 and 7 on which they had previously attained seniority. Employees on the Western District elected not to retain any individual prior rights as may have existed on a divisional basis, and thus have prior rights for work on the Western District in addition to system-wide seniority.

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 claim as presented shows that Claimant Maxwell has meantime been working on other positions, albeit at points distant from Rigby Yard.

As concerns Carrier argument that the instant claim is subject to the doctrine of estoppel in a contention that it is opposite the position of the Organization in a claim filed by Trackman Blanchard involving the same position at Rigby Yard, for which the Carrier granted Mr. Blanchard 14 days pay. The Board finds no merit in this Carrier argument. We are satisfied in study of the record that the Organization was

not in agreement with the action taken by the Carrier in allowing Mr. Blanchard to displace Mr. Maxwell, and that since the Carrier had determined on its own volition to permit Mr. Blanchard to displace Mr. Maxwell that the Organization had a right to seek compensation for the 14 days during which the Carrier initially denied the displacement. Moreover, the Board finds that the Organization had a right, if not a responsibility, to pursue the instant claim in protection of the community of interest in seniority. In this respect, the Board will note the following excerpt from the Findings in Award No. 15510 of the First Division, NRAB, BRT v C&W Railway, Referee A. Langley Coffey:

Although frequently spoken of as a property right in which the individual employee has a vested interest, seniority is something which all employees enjoy in common. At most it is community property. Therefore, the organization, for the protection of all employees and not so much in the interest of any one employee, insists on being heard by the carrier on the matter of administrative seniority. It is not uncommon for it to step in as was done in the instant case and assert what it considers to be the proper application of a rule in the community interest against the individual's asserted right.

In the light of the above considerations, the Board will direct that Claimant Maxwell be given the opportunity to now hold the position of Trackman on the Rigby I&R Crew. Further, the Board will hold that the Carrier compensate Claimant Maxwell for the difference, if any, between the gross earnings of positions Claimant Maxwell has meantime held as compared with the gross earning Mr. Blanchard received while occupying the Rigby I&R Trackman position during the period January 4, 2003 to the date of implementation of this Award. The claim for travel time and mileage is denied in the absence of a showing of Agreement support of record covering this subject and the compensation being sought.

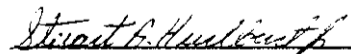
AWARD: Claim disposed of as set forth in the above Findings.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated February 5, 2004