

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 Carrier violated the Agreement when it failed and refused to allow Zone A Construction Crew #2720 members Brent C. Randall, Jr., Ray L. Douglass and Brian S. Miles and Zone A Brush Cutting Crew #2732 members Steven R. Richard and William G. Grass per diem allowance for Saturday, July 24, 2004, when they were called and used to perform overtime service at a derailment on the Bucksport Branch.**
- 2. As a consequence of the violation referred to in Part (1) above, the Claimants listed in Part (1) shall each be allowed \$31.50 and the \$1.25 water allowance listed in Article 27 of the Agreement. (Carrier File MW-04-39)**

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 question at issue which the Board is called upon to determine from the record as presented on the property is whether the Claimants, employees assigned to positions on Production Crews, are entitled to the per diem allowance that is contained in Paragraph 27.13 of Article 27 of the current Agreement for work performed on Saturday, July 24, 2004.

Paragraph 27.13 of the Rules Agreement reads as follows:

Employees assigned to positions on Production Crews will be allowed per diem expenses each day worked for, meals, lodging and travel as follows:

January 1, 2003 \$30.50

January 1, 2004	\$31.50
January 1, 2005	\$32.50
January 1, 2006	\$33.75
January 1, 2007	\$35.00
January 1, 2008	\$36.50

* In addition to the per diem rates indicated above, Production per diem crews will be allowed an additional \$1.25 payment per day for water.

There is no dispute concerning the fact that Claimants were assigned to positions on Production Crews that have scheduled work weeks that run from Monday through Friday, with Saturday and Sunday as designated rest days.

On Saturday, July 24, 2004, and again on Sunday, July 25, 2004, both scheduled rest days for the Production Crew assignments held by Claimants, they were called to perform work involving the repair of track damaged in a derailment earlier that week.

The Carrier says that although the per diem payment was allowed for Sunday, July 25, 2004, that it was done in error.

It is the position of the Carrier that the work for which Claimants were called to perform on their rest days was entirely unrelated to the character or nature of work performed by Production Crew positions. It says the Claimants were called out and used to supplement the two-member Bucksport I&R and Maintenance Crew so as to complete the track repair work in a timely manner. The Carrier thus maintains that Claimants performed work involving an emergency situation, a derailment, and not work related to their Production Crew positions. It says that had this been planned overtime, rest day, or holiday work which was a continuation of a work project of a specialized nature, such as tie and surface, rail laying, construction, clean up, etc., then the nearest specialized Production Crew would have been used and paid per diem expenses.

In the opinion of the Board, since argument of record was only advanced as involving application of Paragraph 27.13, *supra*, we must here restrict our findings to a consideration of that particular provision of the Rules Agreement. In this respect, the Board finds that while it may be that the work at issue arose out of an emergency or derailment situation, there is nothing in the language of Paragraph 27.13 to suggest that payment of the per diem allowance does not apply account the presence of such a circumstance. This rule, standing alone, prescribes, in simple and clear language, that an employee assigned to a position on a Production Crew will be allowed per diem expenses for "each day worked, for meals, lodging, and travel." Standing alone, this contract language may not be read, as the Carrier

contends, to have application only "while performing Production Crew work in accordance with their regular shift."

Certainly, the above conclusion might well have differed if the record was to have shown what the Claimants were, in fact, told when called to report for the work at issue; whether they were told that they would be reimbursed for meals, lodging and transportation; whether the location of the work called for involved Claimant expenses associated with lodging and travel; the nature of the work performed; the reason Claimants were called rather than employees holding regular Trackmen positions; how, given the fact the derailment occurred earlier in the workweek, the work involved differed from project work; and, a showing of past practice as to how the contract language has previously been applied when employees assigned to Production Crews were called for what the Carrier offers as work not involving project work of a specific nature.

In the particular circumstances of record, the Board will hold that the claim here before the Board be sustained.

Lastly, the Board will note that the record shows William G. Grass not to be a proper Claimant as he did not work on July 24, 2004. Further, since the record reveals that Claimant Steven R. Richard was already paid the per diem allowance for Saturday, July 24, 2004, he is not entitled to further payment for that date.

AWARD:

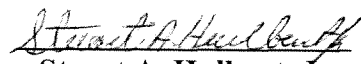
Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 10/23/06