

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 failed and refused to allow I&R Foreman Terry Maschino several different foreman positions he had bid on and had been assigned to commencing May 11, 2005, and continuing.**
- 2. As a consequence of the violation referred to in Part (1) above, I&R Foreman Terry Maschino shall now be allowed one hundred dollars (\$100.00) per day for everyday that he is withheld from the positions he bid for and was awarded. (Carrier File MW-05-08)**

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 record in this case supports the position of the Carrier that in application of Article 8.3(e) and Article 35.1 of the current Agreement that Claimant was not denied an exercise of seniority to the several different foreman positions he had bid on since it was necessary and proper in accordance with those rules to force assign him to a fill a vacant I&R Foreman position and to remain on that position when the Carrier did not receive a bid from a qualified bidder for that position.

Article 8.3(e) of Article 8, Filling Vacant Positions, reads:

In the event no bids are received from qualified employees for an advertised vacancy, the Carrier will promote, if applicable, in accordance with Article 35 of this Agreement.

Article 35.1 of Article 35, Promotion by the Carrier, reads:

Employees who are working in other than their highest rated position may be promoted by the carrier to a higher rate position in which they hold seniority as the needs of the service dictate. Such promotion by the Carrier will be in reverse seniority order from the roster of the promoted class. The designated headquarters point or reporting point will determine the seniority zone from which the promoted employee will be selected.

In denial of the claim on the property, the Carrier, in a letter of June 17, 2005 to the Organization, presented the following rationale for its decision:

After having no qualified bidders for the Danville I&R Foreman position, the Carrier then followed Article 35 and promoted Mr. Maschino, who owned the lower rated job position of Tamper Operator in Crew #2723, to the higher rated position of I&R Foreman in Danville I&R Maintenance Crew #3741. Mr. Maschino was paid the applicable rate for this position in accordance with Article 30, Rates of Pay. The Danville I&R Foreman position that Mr. Maschino has held since his initial promotion by the Carrier has been up for bid on five separate occasions. Having received no bids for this position, the Carrier, in meeting the needs of service and the provisions of Article 35, has maintained Mr. Maschino's promotion to the higher rated position. While Mr. Maschino has bid on equally rated positions, the Carrier has no other qualified employees working in a lower rated position that would allow for promotion by the Carrier to fill the position that Mr. Maschino has been promoted to.

In part, the Organization protests that it does not understand what it says is the Carrier position of not allowing younger employees to become qualified Track Foremen; that Claimant has offered to help qualify a younger employee for the Track Foreman position in Danville; and, there have been other employees who have forfeited their Foreman seniority so they did not have to be force assigned at this time in their railroad careers. These are not arguments that overcome the application of rules governing the force assignment of an employee. As the Carrier avers, such argument acknowledges the Carrier right to force assign individuals to an I&R Foreman position pursuant to Article 8 and Article 35.

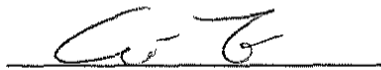
The record as presented and developed not being found to support the contentions of the Organization, the claim will be denied.

AWARD:

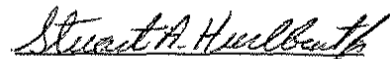
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 2/5/08