

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier failed to assign Mr. J. D. Pitcher to the I&R Foreman's position on Advertisement No. AM-22 which was assigned on June 28, 1997.
2. As a consequence of the aforesaid violation, Equipment Operator J. D. Pitcher shall now be placed on the foreman's roster with a June 28, 1997 seniority date and he shall be compensated for all wage loss suffered commencing June 28, 1997 and continuing. (Claim No. MW-97-12)

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.

As noted above, the Organization advances the claim that the Carrier violated the rules of the Schedule Agreement, primarily Article 7, when it failed to award the Claimant a position of Inspection & Repair (I&R) Foreman that was advertised in Waterville, Maine. The Claimant placed a bid for this position on June 17, 1997.

The Carrier maintains that the request of the Claimant that he be awarded the I&R Foreman position is totally without merit. It says that the Claimant did not, at the time, meet the qualifications listed. In particular, the Carrier submits that the Claimant was not FRA and Rules Qualified. Further, the Carrier says that its actions were taken in full and complete compliance with the provisions of Article 7 and other rules of the Schedule Agreement.

Article 7, Qualifications For Positions, reads in part here pertinent as follows:

- 7.1 In making application for an advertised position or vacancy, or in the exercise of seniority, employees may be required to give a reasonable practical demonstration of their qualifications to perform the duties of

the position. Employees will be allowed up to 30 days to demonstrate sufficient qualifications.

- 7.2 In the event employees are required to give a reasonable practical demonstration of their qualifications for a position, the Company must give uniform job related tests based on job related criteria in order to ascertain initial qualifications for positions. The General Chairman or his designee may be present when such tests are given.

In study of the record, especially the duties normally and customarily devolving upon the position of I&R Foreman as set forth in the record, the Board finds it evident that the Claimant did not in fact possess the requisite qualifications to fill such position. When the Claimant filed his formal grievance with the Manager of Engineering Personnel & Safety under date of July 7, 1997, he essentially acknowledged that he needed and was anticipating being given benefit of on-the-job training. In this respect, the Claimant said the following in his letter:

I would also like to point out to you that there have been foreman (sic) in the past that started out as I&R Foreman with a supervisor assisting them while in training. I would also like to note that the job for which I had bid on I would have been working beside a trackman that has an overwhelming amount of experience in this type of work. He has worked for this railroad since 1970 and as a foreman for the majority of his railroad career.

Further, more than a year prior to the posting of the I&R Foreman's position, by letter of April 13, 1996, the Claimant inquired about the manner in which he might keep his NORAC (operating rules) qualification current and also become FRA qualified. That the Claimant would now allege that it was the fault of the Carrier in not scheduling dates for appropriate courses that prevented him from attaining these required qualifications does not serve to overcome the fact that the Claimant was not FRA and Rules Qualified when the I&R Foreman position here at issue was posted for bid. It was the responsibility of the Claimant to have followed up on such matters, and not that of the Carrier to assure that he was qualified. In this respect, it is noteworthy that the Manager of Engineering Personnel & Safety had responded to the Claimant's inquiry both by means of a personal talk and a letter of April 29, 1996. This letter reads in part:

As I stated to you in the FRA Requalification Class, you must either take the Foreman's Correspondence Course that is offered by the railroad and/or also be approved by Mr. Dixon and Mr. Hough to be put onto the FRA list.

Also on NORAC, you must take a three (3) day class given by Mr. Thomas Foster of the Transportation Department and then be set up to take a NORAC requalification test on a yearly basis.

I hope both our talk and this letter clears up some of the questions you had about becoming qualified as a foreman.

Except for the Claimant submitting a diploma that he was awarded on March 14, 1997 for having satisfactorily met the requirements for the successful completion of the Track Foreman's Training Program, the Claimant offers no documentary support as to what follow-up action, if any, he took relative to the above stated advice that he contact the officials named so that he become enrolled in and complete the FRA and NORAC classes.

The Board also finds no merit in argument that the Claimant was denied the opportunity to demonstrate his ability under Article 7 of the Agreement. In the opinion of the Board, the referenced intent of the 30-day period contained in Article 7 is to allow an employee deemed qualified to demonstrate a capacity to fulfill the requirements of the position. This is the manner that such language has generally been interpreted in disposition of disputes on other properties. In other words, Article 7 does not provide an employee a 30-day period in which to learn or master the bulletined requirements of a position.

The record failing to support the contention of the Claimant that he was qualified for the position of I&R Foreman, the claim will be denied.

AWARD:

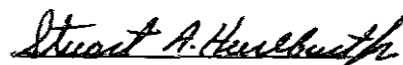
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 10-12-99