

PUBLIC LAW BOARD NO. 7099

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES, DIVISION OF I.B.T.**

CASE No. 02

-And-

**UNION PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign BUC Operators J. Brown, M. Larson, B. Bertran and J. Osberg to perform maintenance repair work on BUC Undercutter No. CNW 2003 beginning on May 12 and continuing through June 24, 2003 and “instead assigned said work to Shop Craft employees D. Stark, J. Beaver, J. Brown, D. Iverson and D. Laferer (System File UPSW-2052T/1374440).
- (2) As a consequence of the violation referenced to in Part (1) above, Claimants . Brown, M. Larson, B. Bertran and J. Osberg shall now be compensated at their applicable rates of pay for an equal proportionate share of the one thousand two hundred forty (1,240) man-hours expended by the Shop Craft employees in the performance of the aforesaid repair and maintenance of the machine.”

The Carrier has declined this claim.”

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

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After thoroughly reviewing and considering the record of this case, together with the parties presentation, the Board finds that the claim should be disposed of as follows:

The relevant and material facts associated with this Claim are not in dispute. Thus, on April 23, 2003, an Undercutter operated under the Carrier’s jurisdiction was struck by an Amtrak train.

Major damages were sustained by the equipment such that the Carrier determined that the Undercutter should be moved to a major repair shop in Denver, Colorado for repairs and overhaul. Such repairs were performed by five shop craft employees during the period May 12, 2003 through June 24, 2003. In its initial claim, the Organization maintained that the Claimants' rights were violated as a result of the Carrier's action, and in support of such claim, asserted a violation of Rules 5 and 10(a) of the Agreement.

Rules 5, Classification of work, provides, in relevant part:

Employees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMW E.

Rule 10, Roadway Equipment Subdepartment, of the UP Agreement provides, in relevant part:

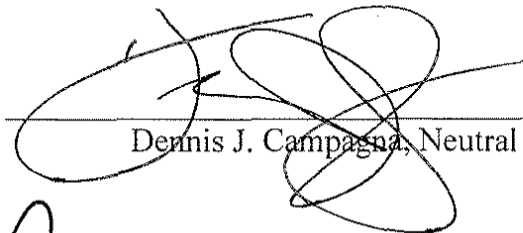
Work in connection with the operation, care, maintenance (running repairs) and servicing of roadway equipment (including attachments thereon) assigned to work in the Roadway Equipment Subdepartment will be classified as work of Roadway Equipment Operators.

As an initial point, the Board notes that the Carrier asserted a number of procedural defects in the Organization's processing of its claim. Following a careful review of the Carrier's stated objections, the Board finds that a number of these procedural claims initially raised by the Carrier were subsequently withdrawn. With respect to the other procedural objections raised by the Carrier, such as the change of the contractual basis of the claim and the assertion of a duplicate claim, the Board finds that the Carrier was never misled by the Organization or otherwise prejudiced. Finally, the claim by the Carrier that the General Chairman lacked jurisdiction to properly progress the instant claim was constructively withdrawn by the Carrier as the claim progressed. Accordingly, the Board respectfully rejects the procedural claims raised by the Carrier.


As to the merits of the Organization's claim, an analysis of the instant claim first begins with a review of the Agreement language claimed to have been violated. When reading Rules 5 and 10 together, it is evident that the types of repairs properly claimed by the Organization are those in the nature of "running repairs". To this Board, "running repairs" connote light repairs incidental to the maintenance of the machine. In the instant matter however, it was undisputed that the damage sustained by the Undercutter required much more than the incidental or light maintenance as set forth by Rules 5 and 10. This fact was not disputed by the Organization during the on-property processing of this claim. While the Organization asserted that its members were fully capable of performing the repair work at issue, such assertion, standing alone, does not provide the Organization sufficient basis upon which to sustain its claim. Indeed, it must first be established that the work claimed by the Organization is supported by the Agreement. However, as noted above, the repairs made to the Undercutter cannot be properly classified as normal or routine types of "running repairs" covered by Rules 5 and/or 10. Hence, the Board finds and concludes that there has been no violation of the Agreement.

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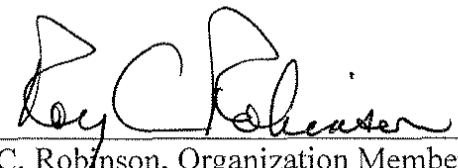
Claim denied.



Dennis J. Campagna, Neutral Member



D.A. Ring, Carrier Member



R. C. Robinson, Organization Member

Dated: August 29, 2008

Buffalo, New York