

NATIONAL MEDIATION BOARD, ADMINISTRATOR
SPECIAL BOARD OF ADJUSTMENT NO. 957

In the Matter of the Arbitration

-between-

Brotherhood of Maintenance of
Way Employees

-and-

Southeastern Pennsylvania
Transportation Authority

OPINION AND AWARD
Award No. 266

In accordance with the September 26, 1999 agreement in effect between the above-named parties, the Undersigned was designated as the Chairman and Neutral Member of the SEPTA-BMWE Public Law Board (the Board) to hear and decide the following Claim:

1. The Carrier violated Article V of the Agreement when it failed to use Rail Maintainer II J. Graham to perform overtime work on Sunday, February 2, 2003 (SEPTA Grievance 03-066-F12).
2. As a consequence of the violation referred to in Part (1) above, Rail Maintainer J. Graham shall now be allowed overtime wages lost on February 2, 2003.

A hearing was held in Philadelphia, Pennsylvania on March 18, 2004 at which time the representatives of the parties appeared. All concerned were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses consistent with the relevant procedures that exist between the parties. The Arbitrator's Oath was waived. The Board met in Executive Session after the hearing.

FINDINGS OF FACT AND OPINION OF THE BOARD

Article V, Section 514 (Overtime) of the Agreement provides, in pertinent part, that:

(a) Hours worked in excess of eight (8) hours per day, of forty (40) hours in a calendar week, will be considered overtime work and will be paid at time and one-half. There will, however, be no pyramiding of such overtime.

(b) Work will be regarded as on the calendar day when the shift starts. Thus, in the case of shifts that overlap midnight, all work on such shift is regarded as performed on the calendar day the shift started.

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(d) The following procedures will govern the assignment of work outside the regular shift in the Track and Utility Sections:

(1) For all scheduled work outside the regular shift, the opportunity for such work will be offered by craft and in seniority order to the incumbent subject to the following: The incumbents are described as all of those who regularly have worked on a particular project as a result of picking or daily assignment and have and have been assigned to the project for a continuous eight (8) hour shift during the past five (5) days. However, such work shall first be offered to the employee(s) who, as a result of his/her daily assignment has spent the preponderance of his/her time, during the past five (5) days, on the project.

The Claimant served as a Rail Maintainer II in the Track and Utility Department. He received an award for a position as a welder in the Buildings and Bridges Department. The Claimant returned his tools at the end of the shift on Friday, January 31, 2003 in anticipation of reporting to the welder position on Monday, February 3, 2003 following the Claimant's regular days

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off on Saturday and Sunday (February 1 and February 2, 2003).

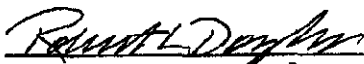
The record indicates that the present dispute arose in connection with certain overtime work on Sunday, February 2, 2003.


The Organization asserted that the Carrier improperly permitted a junior employee to perform the disputed work on Sunday, February 2, 2003. The Carrier argued that a proper assignment of overtime occurred due to the Claimant moving from the Rail Maintainer II position in the Track and Utility Department to the welder position in the Buildings and Bridges Department.

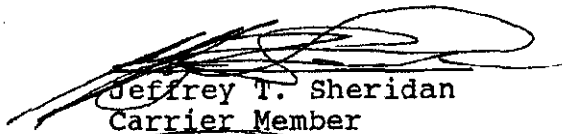
During the hearing the parties indicated that they had agreed to settle the instant dispute. The Award therefore shall indicate that the Claim is dismissed.

Accordingly, the Undersigned, duly designated as the Chairman and Neutral Member of the SEPTA-BMWE Public Law Board and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

The Claim is dismissed.


Robert L. Douglas
Chairman and Neutral Member


William L. Capik
Employee Member
Concurring/Dissenting


Jeffrey T. Sheridan
Carrier Member
Concurring/Dissenting

DATED: _____