

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

In the Matter of the Arbitration

-between-

Brotherhood of Maintenance of
Way Employes

-and-

Southeastern Pennsylvania
Transportation Authority

OPINION AND AWARD
Award No. 257

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 a dispute concerning the following Claim:

1. The Carrier violated the Agreement when it failed and refused to allow Claimant L. Yacovino, Jr. to exercise a "pick" over junior Track General Helper (TGH) J. Izzard on the Lansdale, Pennsylvania crossing box position beginning in May 2000 (BMWE Grievance 20-030-F12).

2. As a consequence of the above-stated violation:

"Senior employe Yacovino should be immediately placed on the position of TGH Crossing box, Lansdale (sic) PA which is occupied by Junior TGH Izzard. Mr. Yacovino should also be compensated for any lost wages including straight time, overtime and any holiday or personal pay lost."
(Attachment No. 1 to Employees' Exhibit A-3)

A hearing was held in New York City on November 2, 2001 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

The Claimant possessed seniority as a Track General Helper with a seniority date of August 15, 1983.

Article V, Section 507 provides, in pertinent part, that:

(d) The Authority will schedule pickings at least twice annually, in which employees, in accordance with their job seniority, shall have the right to select reporting locations, scheduled hours and relief days, as designated by the Authority.

Article V therefore establishes job seniority as a critical component for determining schedule pickings.

A careful review of the record indicates that a junior employee occupied the position that the Claimant had sought during the May 2000 pick. The record further reveals, however, that the Carrier had removed the relevant position from the pick list and had designated the position as an assigned position. As a result of the Carrier removing the position from the pick list, the junior employee retained the right to hold the position under the special circumstances set forth in the record.


The record confirms that the Claimant accepted another position at the Lansdale, Pennsylvania crossing box during the relevant time. As a consequence, the claim is moot and shall be dismissed.

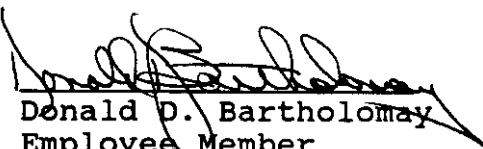
Accordingly, the Undersigned, duly designated as the Chairman and Neutral Member of the SEPTA-BMWE Public Law Board

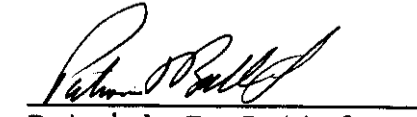
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and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

The Claim is dismissed in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member
Concurring/Dissenting


Patrick J. Battel
Carrier Member
Concurring/Dissenting

Dated: 1-7-02