

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. 267

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 the Agreement when it released its readily available and fully qualified BMWE Track Department employees from duty and assigned outside forces to perform non-emergency snow removal on January 29, 2003 (SEPTA Grievance 03-067-F12).
2. As a consequence of the above-stated violation, "Any and all B.M.W.E. employees who were scheduled, and then released should be compensated for the hours worked by outside contractors."

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 X, Section 1004 (Contracting Out) of the Agreement provides, in pertinent part, that:

Except in emergencies, employees will perform normal and routine maintenance. SEPTA shall give favorable consideration to having certain repair work performed by its employees instead of being contracted out, provided the work is performed with existing facilities, without adding employees, and that the cost of such work is competitive with outside manufacturers as to the quality, price, and time of performance, and will not conflict with the performance of normal maintenance. It is not the intention of SEPTA to contract out solely for the purpose of reducing the work force.

The Authority agrees to provide the Union with the Capital Budget/Capital Program for each fiscal year after it is approved by the SEPTA Board.

The Authority and the Union will completely discuss and investigate the contracting out before contract is let.

The decision with respect to the contracting out of any particular work shall remain solely that of SEPTA.

This provision is subject to the grievance procedure.

The record indicates that the present dispute arose in connection with the removal of snow from platforms and parking lots on or about January 29, 2003. The Organization asserted that the Carrier improperly permitted outside forces to perform the disputed work after the Carrier had released the employees from work.

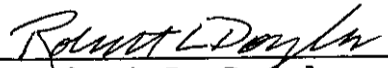
During the hearing the parties indicated that they had agreed to settle the instant dispute. The Award therefore shall indicate that the Claim is dismissed.

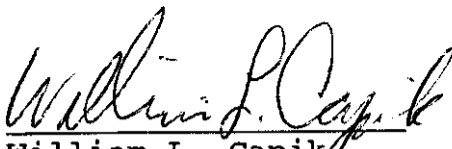
Accordingly, the Undersigned, duly designated as the

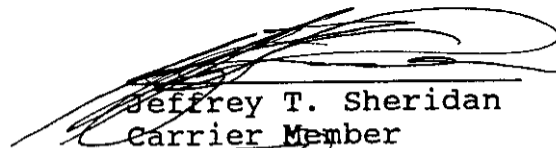
SBA 957
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Chairman and Neutral Member of the SEPTA-BMWE Public Law Board
and having heard the proofs and allegations of the above-named
parties, makes the following AWARD:

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: _____