

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

In the Matter of the Arbitration

-between-

Brotherhood of Maintenance of
Way Employes

OPINION AND AWARD
Award No. 275

-and-

Southeastern Pennsylvania
Transportation Authority

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

1. The Carrier violated Article V, Section 514, Overtime of the Agreement when it failed to notify Claimant D. Sinclair of the change in the starting time of the scheduled overtime work to which he had been assigned on Thursday, February 24, 2005 and instead called and assigned a junior employee thereto (System File 05-087-F12).
2. As a consequence of the violation referred to in Part (1) above, Claimant Sinclair shall now be allowed eight (8) hours' pay at his applicable time and one-half rate of pay for overtime wages lost on February 24, 2005.

A hearing was held in Philadelphia, Pennsylvania on February 12, 2009 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 Board met in Executive Session after the hearing.

FINDINGS OF FACT AND OPINION OF THE BOARD

The record indicates that the present dispute arose due to the alleged failure of the Carrier to offer an overtime assignment to the Claimant to perform certain work that began on Thursday, February 24, 2005. The Carrier denied that any violation of the Agreement had occurred because the Claimant allegedly had failed to answer several attempts by the Carrier to contact the Claimant to notify the Claimant that the Carrier had changed the starting time for the Claimant to report to perform the disputed work. As a result of the inability of the Carrier to contact the Claimant, the Carrier indicated that the Carrier had assigned the disputed work to a junior employee who was able to report at the earlier starting time to perform the disputed work. The Organization challenged this action by the Carrier. The Carrier denied that any violation had occurred.

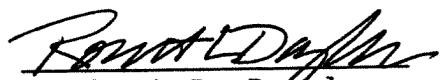
The parties failed to resolve the matter during the preliminary steps of the grievance procedure. The dispute proceeded to arbitration for a final and binding determination.

During the hearing the parties indicated that they had agreed to settle the instant dispute. As a result, the Award shall indicate that the Claim is dismissed.

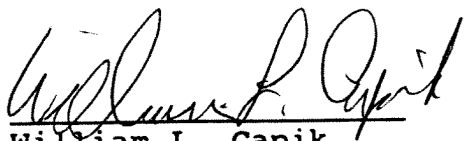
Accordingly, the Undersigned, duly designated as the Chairman and Neutral Member of the SEPTA-BMWE Special Board of Adjustment and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

The Claim is dismissed in accordance with the

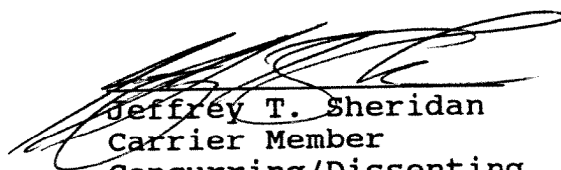
Opinion of the Board.



Robert L. Douglas
Chairman and Neutral Member



William L. Capik
Employee Member
Concurring/Dissenting



Jeffrey T. Sheridan
Carrier Member
Concurring/Dissenting

DATED: 2/27/09