

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. 276

-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 the Agreement when it failed to call Track Maintainer 1 A. Pickell for overtime service on August 11, 2005 and instead called and assigned an employee junior to the Claimant to perform overtime service (System File 05-091-F12).
2. As a consequence of the violation referred to in Part (1) above, Claimant Pickell shall now be compensated at his applicable time and one-half rate for all hours worked by the junior employee for overtime wages lost on August 11, 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 Claimant attended and participated in the hearing. 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 decision of the Carrier to assign an overtime assignment to a junior employee to perform certain work that began on August 11, 2005. The Carrier denied that any violation of the Agreement had occurred because the Claimant has worked 16 hours during the prior day and the overtime assignment on August 11, 2005 would have caused the Claimant to work 16 hours on August 11, 2005. The Carrier insists that the Carrier complied with its practice of prohibiting employees from working 16 hours on consecutive dates except in certain emergency situations. The Organization alleges that the Carrier's approach violates the applicable section concerning overtime in the collective bargaining agreement. The Organization challenged this action by the Carrier. The Carrier denied that any violation had occurred.

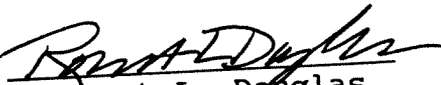
The parties failed to resolve the matter during the preliminary steps of the grievance procedure. The dispute proceeded to arbitration for a final and binding determination.

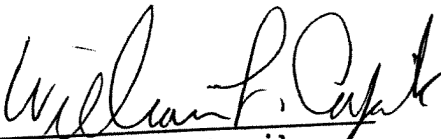
During the hearing the parties indicated that they had agreed to settle the instant dispute. As a result, the Award shall indicate that the Claim is dismissed.

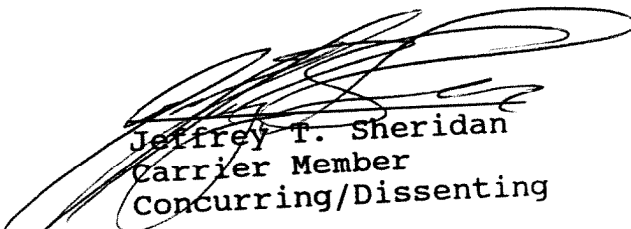
Accordingly, the Undersigned, duly designated as the Chairman and Neutral Member of the SEPTA-BMWE Special Board of Adjustment and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

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