

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. 280

-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 Plumber J. Gallagher for overtime service on December 13, 2003 and instead called and assigned an employee junior to the Claimant to perform overtime service (Carrier's File 04-034-F11).
2. As a consequence of the violation in Part (1) above, Claimant Gallagher 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 December 13, 2003.

A hearing was held in Philadelphia, Pennsylvania on June 10, 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 decision of the Carrier to assign certain overtime work on December 13, 2003 to an employee who had less seniority than the Claimant, who served as a Plumber at the time. The disputed work involved rearranging certain fixtures at the shop at Suburban Station.

Section 514 (Overtime) provides, in pertinent part, that:

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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 employe(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 Organization asserted that the most recent work assignment of the Claimant made the Claimant the incumbent within the meaning of Section 514(d)(1) and therefore entitled the Claimant, who had the necessary qualifications, to exercise his seniority for the disputed overtime assignment. The Carrier contended that the ongoing work assignment of the junior employee for approximately three months made the junior employee the incumbent for the

disputed overtime assignment. The decision of the Carrier to assign the disputed overtime assignment to the junior employee rather than to the Claimant resulted in the Organization initiating a grievance to challenge the Carrier's decision. 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.

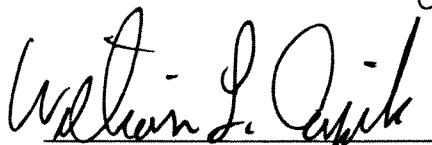
During the hearing the parties indicated that they had agreed to settle the instant dispute. As a result, the Award shall indicate that the Claim is dismissed.

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:

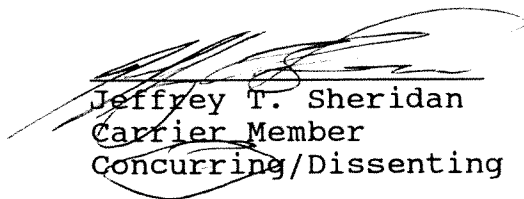
The Claim is dismissed in accordance with the Opinion of the Board.



Robert L. Douglas
Chairman and Neutral Member



William L. Capik
Employee Member
Concurring/Dissenting



Jeffrey T. Sheridan
Carrier Member
Concurring/Dissenting

DATED: _____