

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

In the Matter of the Arbitration

-between-

Brotherhood of Maintenance of
Way Employees

OPINION AND AWARD
Award No. 281

-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 a dispute concerning the following Claim:

1. The three (3) day suspension [two (2) days administrative and one (1) day without pay] imposed upon Bridge and Building Employees K. Palan and B. Riley in connection with their failure to work mandatory overtime on February 12, 2008 is arbitrary, capricious and in violation of the Agreement (Carrier's File 08-047-F11).
2. As a consequence of the violation in Part (1) above, Mr. Palan and Mr. Riley shall have any and all mention of the discipline removed from their record and be reimbursed for all monetary loss.

A hearing was held at the offices of the Employer 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 Arbitrator's Oath

was waived. The Board met in Executive Session after the hearing.

PRELIMINARY FINDINGS OF FACT

The Claimants worked in the Bridge and Building Department on the date of the incident on February 12, 2008. The record indicates that an ice and sleet storm occurred during the afternoon and evening on February 12. The Claimants failed to remain at work to perform snow removal. The Carrier thereafter suspended the Claimants for three days for their refusal to remain to perform snow removal on a mandatory overtime basis.

The Union filed a grievance concerning the discipline. The Employer denied the grievance. The parties failed to resolve the matter during the preliminary steps of the grievance procedure. The dispute proceeded to the Board for a final and binding determination.

FINDINGS OF FACT AND OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over this dispute.

This case involves discipline. The Employer has the burden to prove its case by clear and convincing evidence.

The Carrier provided timely and proper advance notice to the appropriate personnel, including the Claimants, that the inclement weather-related conditions would require such personnel

to remain at work for mandatory overtime for snow duty on February 12, 2008. The possibility of and the need for employees to work mandatory overtime for snow removal constitutes a clear, explicit, and reasonable policy of the Carrier. In this regard the record confirms that the Chief Engineer had issued a notice to all of the relevant employees on or about December 11, 2007 to underscore the potential during the snow season that the Carrier would activate the mandatory overtime policy for employees to perform snow removal.

The record indicates that the Claimants, however, failed to remain for the mandatory overtime on February 12 for a second shift from 3:00 p.m. to 11:00 p.m. The Claimants, who were brothers-in-law, failed to provide any legitimate justification for refusing to remain for the mandatory overtime. In contrast, all of the remaining 49 employees complied with the mandatory overtime requirement by remaining at work as directed. In addition, the record indicates that no employees have ever refused to remain to perform snow removal on a mandatory overtime basis in the absence of a legitimate excuse.

Under these highly unusual circumstances, the Carrier proved by clear and convincing evidence that just cause existed to impose the disputed discipline. By failing to remain to perform the assigned tasks to respond to the snow conditions, the Claimants placed an additional burden on their co-workers to perform the work that the Claimants would have and should have performed in response to the snow conditions. The refusal by the

Claimants to work the mandatory overtime violated Rule 40 (Refusal/failure to follow a directive), Rule 41 (Refusal/failure to perform assigned work), and Rule 42 (Unauthorized absence from assigned work area) of the "Work Rules for Employees of the Line Maintenance Department."

By failing to comply with the Carrier's instructions to remain for the mandatory overtime, the Claimants disregarded a basic tenet of the relationship between employers, trade unions, and employees to work first and to grieve later. The Claimants most assuredly knew and understood the requirement for employees to furnish a legitimate excuse, proper justification, or credible reason for their refusal to remain for the mandatory overtime. The Claimants failed to do so.

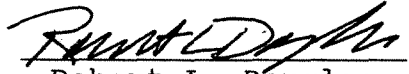
Under these highly unusual circumstances, the record omits any basis to absolve, to excuse, or to relieve the Claimants from the obligation that existed for them to have complied with the clear, direct, and reasonable efforts of the representatives of the Carrier to provide for a proper response to the snow conditions. No basis exists for the Special Board of Adjustment to change, disturb, or modify the determination of the Carrier to suspend the Claimants as set forth above. The Carrier's decision to suspend the Claimants for three days therefore did not constitute arbitrary or capricious action and did not violate the Agreement.

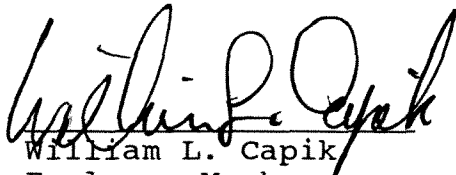
The Award shall indicate that the Claim is denied.

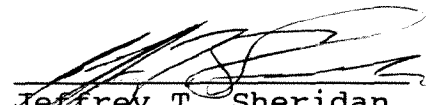
Accordingly, the Undersigned, duly designated as the

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 denied 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: _____