

SPECIAL BOARD OF ADJUSTMENT No. 957

AWARD No. 4

CASE No. 4

GRIEVANCE 84-6-F12

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
(BMWE)

and

Southeastern Pennsylvania Transportation
Authority (SEPTA)

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

"The Carrier violated Section 514(d) of the current Collective Bargaining Agreement when it refused to allow overtime to senior Track General Helper William Marchionni (Seniority Date 3/7/83) on Sunday, April 29, 1984, for a period of 15½ hours overtime but instead granted such overtime to junior Track General Helper Tillman Rose (Seniority Date 8/1/83).

REMEDY

Claimant William Marchionni shall now be compensated for 15½ hours overtime pay at the appropriate rate of pay for Carrier's violation when intentionally failing to notify the Claimant on April 29, 1984, of such overtime work."

OPINION OF BOARD:

Claimant W. Marchionni and T. Rose, both Track General Helpers, worked the same number of hours on the same job site under the same Foreman on April 28, 1984. Claimant is the Senior employee of the two. Apparently at the end of their work day Claimant left directly for home from the work site, whereas Helper Rose went to headquarters. After Claimant's departure the Foreman was notified that a contractor planned to work the next day, Sunday April 29th. Thus an overtime opportunity arose and the Foreman assigned it to Helper Rose, the junior employee.

Section 514(d) of the Agreement reads:

"In assigning overtime, SEPTA's general practice will be to give preference to the incumbent of the position requiring overtime. If the incumbent refuses the work, it will then be offered in seniority order to available, qualified employees present at the location."

The Organization contends that as the senior employee, Claimant was the incumbent and that SEPTA should have contacted him before assigning the overtime opportunity to the junior employee. SEPTA contends that section 514(d) does not require that preference be given to the "senior" incumbent. Rather,

as Claimant had already left and Helper Rose had remained on the property, the latter was the incumbent and the most senior employee available, qualified, and present at the location when the assignment became available.

In the Board's opinion SEPTA's contention is not persuasive. The section's reference to "general practice" contemplates that except for unusual circumstances, e.g., an emergency, a set procedure for assigning overtime will be utilized. Nothing in this record indicates that an emergency or unusual circumstance was present on April 28th. Furthermore, the language of the section also contemplates that there is an employee who is "the incumbent", as compared to the second sentence which speaks of overtime being offered to other "employees". There is no contractual definition of "incumbent". Nevertheless, that there be a rational process for determining who that is must have been contemplated by the Parties when they negotiated this provision.

It has long been arbitral practice to select an interpretation of contract language which is clear, objective, orderly and practical. In industrial relations seniority has long been

widely accepted as satisfying these criteria. To base "incumbency" upon which employee remains longer on the property than another after the work day is completed, or to simply select an employee who happens to be there when the need arises would make the overtime assignment process accidental, haphazard, disorderly and implausible. Indeed, there is nothing in this record to establish that Claimant was in error in leaving the property when he did nor to establish that Helper Rose was required to be there when the call from the contractor came in.

Therefore, the Board is persuaded that the Claimant as senior General Helper was "the incumbent" for the purposes of section 514(d). SEPTA was required by that section to notify Claimant of the opportunity, and only upon Claimant's refusal could the assignment have been given to another employee. The Foreman's selection of Helper Rose was in violation of the Agreement. This determination does not change or amend the Agreement, but interprets it within the context of accepted arbitral principles as does the awarding to Claimant of the wages he would have earned had his overtime opportunity not been improperly bypassed.

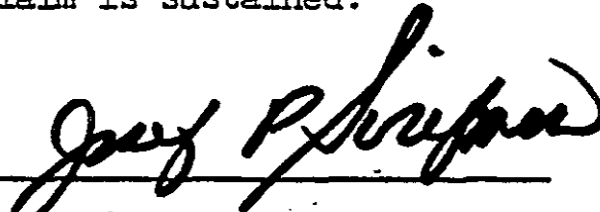
FINDINGS:

Special Board of Adjustment No. 957, upon the record as a whole, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. That the Board has jurisdiction over the dispute herein;
3. That the Agreement was violated.

AWARD

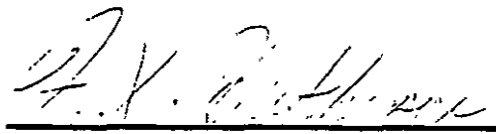
The Claim is sustained.



Josef P. Sirefman
Chairman



William LaRue
Employee Member



Frank X. Hutchinson
Carrier Member

Dated: January 27, 1985