

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24885

Docket No. 44422

98-1-95-1-M-2050

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(The Kansas City Southern Railway Company (former
(MidSouth Rail Corporation)

STATEMENT OF CLAIM:

“Claim of MidSouth Rail Engineer B. R. Davis, Employee No. 40032, for payment of one (1) basic day for being required to line switches on February 26, 1995 in Shreveport, LA - Declination No. 126.”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On February 26, 1995 Engineer B. R. Davis (Claimant) was the regularly assigned Engineer on Train No. 27, bulletined to operate from Shreveport to Monroe and return to Shreveport. Just prior to leaving the yard, Yardmaster B. Bolton instructed Claimant to get off of his engine and line some switches. Engineer Davis responded that he would not “refuse” to line the switches, but that he was not “required” to line switches.

Claimant further noted that Conductor R. Gibbs was "on his way up to the head end." However, Yardmaster Bolton disagreed regarding the whereabouts of Conductor Gibbs. He stated that the Conductor was "80-90 car lengths away" from the head end of the train. Yardmaster Bolton then again instructed Claimant to line the switches and move his train, informing Claimant that he would send the Conductor, via automobile, approximately two miles ahead to meet the train.

Claimant lined one switch, moved the train a short distance, and then lined two additional switches. When the Claimant reboarded his train after handling the switches, he found the Conductor already on board, awaiting his arrival. Shortly thereafter, the train departed for Monroe.

The Organization submitted a penalty time claim, for a basic day, based upon the language in Rules 15-STARTING TIME OF ASSIGNMENTS, 19-SENIORITY RIGHTS, 20-EXERCISE OF SENIORITY, 52-CREW CONSIST and 53-MOVEMENT TO ENGINE SERVICE of the Agreement. Specifically, the General Chairman stated that:

"... it is a flagrant violation of the MidSouth-BLE Rules to require Engineer B. Davis, or any other Engineer on the MidSouth Railroad, to perform this service without compensation, while a conductor was in close proximity at the time."

Carrier denied the claim asserting that there is no language in any of the cited Rules which would prevent or restrict an Engineer from lining a switch when a Conductor was unavailable. Carrier noted that Rule 52-CREW CONSIST, states that:

"The manning of assignments shall be at the discretion of the Carrier, subject to a minimum crew consist of one engineer. It is understood that the Carrier may implement the use of remote controlled locomotives or motive power at its discretion."

Carrier further noted that:

"There is no dispute that Deramus Yard was very congested on February 26, 1995, and once it was doubled together, Train No. 27 was fouling a number of tracks on the South end of the yard causing a significant

amount of delay to several other trains. Train No. 27 had Track Nos. 31, 32, 33, 34, 35, 45, 46, 47, 48, 49, 50, 51 and the pig ramp blocked. Literally, the entire south end of Deramus Yard was blocked by Train No. 27 on the claim date."

Finally, Carrier enclosed a "study" which it alleged had been "conducted by trainmasters across the property from May through December, 1992 which clearly documents the names, job titles, dates and locations where employees other than trainmen, including engineers, have lined switches on numerous occasions all across the former MidSouth property." According to Carrier, MidSouth has "historically had engineers line switches."

In our considered judgement, this is a garden variety switch alignment case. It is neither necessary nor appropriate to deal with this dispute on the basis of the "all or nothing" theses which the Parties advance in support of their positions. Our starting point in deciding this claim is that, ordinarily and all things being equal, the work of lining switches is for Trainmen/Conductors. However, there are some exigent circumstances under which Carrier may require an Engineer to do so in the absence of an available Trainman/Conductor. Beyond that general observation, we refrain from further discussion of the "always/never" dialogue which each Party tried to inject into this record.

It does not appear to be seriously disputed that expedited movement of Claimant's train through the switches was necessary to avoid delays to other traffic in the South end of the Yard. Nor is it disputed that Claimant was instructed by the Yardmaster to get off of his engine and line three switches, and that he did so under protest. The only material point in controversy is the physical proximity and availability of the Conductor. The Organization maintains the Conductor was nearby, whereas Carrier asserts he was "80-90 car lengths (c. 1/4 mile) away.

Had this record demonstrated that circumstances were precisely as Carrier set forth, *e.g.*, the Conductor was too far away to expeditiously perform the switching of Claimant's train which was fouling several tracks in an unusually congested yard, we would have to concur with the Carrier. However, in light of the fact that the Conductor was seated in the engine when Claimant reboarded the train, the Organization supported its claim that the Conductor could have and should have expeditiously performed the service rather than Claimant. Therefore, this claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division**

Dated at Chicago, Illinois, this 12th day of March 1998.