

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25111

Docket No. 44762

00-1-98-1-U-2049

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former Chicago and
(Northwestern Transportation Company)

STATEMENT OF CLAIM:

“Claim in behalf of Engineer R.C. Benedict, SS No. 321-36-2523, Chicago Freight Terminal, for 8 hours on September 12, 1997. The Claim resulted when Engineer Benedict was required to throw switches at Proviso yard while assigned to Job PR67 per instructions of Supervisor of Yard Operations, R. Patterson. Claim premised upon 1986 Arbitration Award 458, Article VIII, Section 3, Side Letter 7 and Award No. 24288 and 24295 of the First Division, National Railroad Adjustment Board and Award 8 of Public Law Board 5263 and Award 10 of Public Law Board No. 5089.”

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 September 12, 1997 Claimant was working as an Engineer on Job PR67 at Proviso Yard in the Chicago Terminal. Claimant was instructed by the Supervisor of

Yard Operations to throw 3 switches while the Yard Foreman was approximately 10 car lengths away. Claimant filed this claim as a result, which the Carrier initially declined.

On September 20, 1997 the Organization appealed the claim to the Assistant Director Labor Relations. Carrier denied the claim for the following reasons:

"In review of the instant claim, I cannot agree that Claimant would be entitled to any additional compensation. Based on information provided by your office, the utility service employees were not readily available to handle the switches as alleged. Further, Yard Foreman Hanson was some 10 to 15 cars distance from the engines when Claimant handled the switch. As such, I cannot agree that Claimant would be entitled to any additional compensation."

The claim was conferenced on March 26, 1998. On July 10, 1998 the Organization's General Chairman confirmed the conference in writing. Their letter did not contain any new facts, but did state the claim would be progressed to this Board. On August 12, 1998 the case was filed.

On September 24, 1998 Carrier wrote the General Chairman stating the Supervisor of Yard Operations denied instructing the claimant to throw the switches.

The Organization argues that the Board should ignore the Carrier's last letter as it was presented after the case already had been appealed to this Board.

The Organization's position is well taken. The General Chairman's letter of July 10, 1998 did not contain any new evidence. Clearly the Carrier had plenty of time to ascertain from the Supervisor of Yard Operations whether or not he had ordered the work performed prior to September. In fact, the Carrier's conference notes indicate that the claim was denied on the basis of the 1986 National Agreement. There appears to be no dispute in fact.

As to the merits of the case, we turn to a similar case in Award 24288 of this Board. The Referee in that case held the following:

"Our inquiry in this dispute, therefore, is directed at whether or not Claimant's Conductor was present and available to throw this switch.

Based upon the record before this Board, we find that the Conductor was present and available. The evidence indicates the Conductor was only approximately 700 feet from the switch when making the cut. At a normal pace, this could be walked in two minutes. The Organization has established a prima facie case, and the burden then shifts to the Carrier to prove the Conductor was not present and available. Carrier has not shown why the Conductor could not have thrown the switch, or why it was unreasonable to wait two minutes for the conductor to reach the switch. The Agreement was violated."

In this claim the Organization has presented a prima facie case. The Carrier has not shown why the Yard Conductor could not have thrown the switches. The Agreement was violated.

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 1st day of March, 2000.