Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25207
Docket No. 44829
01-1-99-1-C-4753

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of CSXT Jacksonville, Florida road Engineer E. R. Fountain II (ID 140152) for one (1) minimum day at yard Engineer's rate account being required to perform yard service "not in connection with his own road assignment" at Moncrief Yard, Florida on November 28, 1994."

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.

Although both parties have tried to make much more of this case, it presents a very narrow issue of contract interpretation based upon undisputed facts and clear and unambiguous contract language. Thus, it is not disputed that on November 28, 1994 Engineer E. R. Fountain II ("Claimant") was assigned to operate a through freight road assignment from the home terminal of Jacksonville, Florida, to the away from home terminal of Chattahoochee, Florida. Upon reporting at the Moncrief Yard Engine Shops in the terminal of Jacksonville, Florida, the Claimant took charge of his assigned locomotive consist in the shop area. As he prepared to depart the shop area for another area of the yard to connect the power to his outbound train, however, the Claimant was instructed by the on duty Yardmaster to move car TTEX 353117 from the shop area and spot it to the TOFC track within the yard terminal at Jacksonville for unloading. Yard crews are employed at Jacksonville and were on duty at the time the Claimant was

instructed to make this transfer move of a car which had no connection with his road train or road assignment.

The Claimant performed the move as directed before coupling to his train and departing Jacksonville for Chattahootchee. Thereafter he filed the instant claim reading as follows (Spelling and punctuation as in original):

> "Claim 126 miles yd rate instructed by yd. Master to move Ttex 353117 from mon. To jax ramp spot on west leed at (t) road. This was a Hot car that yd. Needed transferd to ramp. This car did not pretain to our Train . This yd. Work done by rlOl29."

The Carrier denied the claim at all levels on grounds that the movement the Claimant made prior to departure was permissible without additional compensation under the terms of Article VIII, Section 1 (a), as amended by the November 1991 Implementing Agreement, pursuant to the Recommendations of PEB 219.

The Carrier's affirmative defense that the claim was "materially altered" was raised too late to be properly considered by the Board. See, First Division Award 25124. The only question presented for determination in this case is whether the Claimant's transfer of a car from Moncrief Shop to the Jacksonville TOFC Ramp and spotting of this car on the west lead track within the yard terminal at Jacksonville was a move performed "in connection with [his] own train(s)," within the meaning of the quoted terms in Article VIII, Section 1 (a), as amended by Section VIII 1 (a) of the 1991 Implementing Agreement (PL 102-29). In denying the claim on the property, the Carrier relied primarily on the holding from Award 57 of Public Law Board 5107 (Euker) that, pursuant to PEB 219, "such additional movements do not require the cars handled in the moves to be an integral part of the train upon its arrival or departure at the terminals to be considered 'in connection with its own train.'" That quoted interpretation by Public Law Board 5107 (dated June 7, 1993), was substantially discounted if not totally eclipsed by the contrary and far more authoritative holding of the Chairman of PEB 219, writing as Chairman of Public Law Board 4975 (Harris) in Award 81(dated December 5, 1996) (Emphasis added):

> "Nothing in the record of PEB 219 supports the carrier argument that the recommendations of that PEB gave the carriers the right to combine road and yard work except where the work was performed in connection with the regular road assignment of the crew. The carrier has cited several cases which might be interpreted as reaching a different result. To the extent such cases found that work need not be in connection with the road crew's own assignment, such decisions are not consistent with the intent of PEB 219."

In accordance with the plain language of Article VIII, Section 1 of the 1986 BLE Arbitration Award 458, as amended by Article VIII, Section 1 (a) of the November 1991 Agreement and as interpreted by the Chairman of PEB 219 whose recommendations are the basis of the 1991 amendments, we find that the use of the Claimant in this case to transfer, from the Shop to the TOFC Ramp, an intermodal car which had nothing whatsoever to do with his own train, was not a move intended to be performed without additional compensation, within the meaning of the limiting and qualifying phrase "in connection with its own train." On that basis, this claim is sustained. See also, First Division Award 24828, Public Law Board 5345, Award 16, Public Law Board 4975, Award 34 and Public Law Board 5180, Award 268; Cf. Public Law Board 5180 Award 267 and Public Law Board 5441, Awards 24 and 48.

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 14th day of May, 2001.