PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION (C) & (T)	:	
and	:	CASE NO. 643
CONSOLIDATED RAIL CORPORATION	:	

STATEMENT OF CLAIM:

System Docket No. CRT-7137 (Division Case No. 1002002182) Conductor A.C. Johnson, Brakeman J.J. Norton claiming one day's pay for performing irregular service at their initial terminal, (Metuchen, NJ) on February 8, 1990.

STATEMENT OF FACTS:

On February 8, 1990, the Claimants were the assigned train crew on traveling road switcher WPME-70 reporting for duty at 6:00 PM at Metuchen, NJ. At 6:30 PM, the Claimants were ordered to pick up three cars off Track #5, set out car CR 279392, and place the other two cars back to track #6. They subsequently coupled their car (CR 279392) to their train and departed Metuchen, NJ, their initial terminal.

RELEVANT PROVISIONS OF THE AGREEMENT[1]:

ARTICLE VI - ROAD YARD MOVEMENT

Section 1 - Rule 7 of the UTU(C&T) Single Agreement effective September 1, 1981, and Article F-s-1 of the UTU(E) Single Agreement effective September 1, 1981, are amended and restated to read as follows:

[1] Agreement between Consolidated Rail Corporation and United Transportation Union (C) & (T) awarded by Arbitration Board No. 385, effective September 1, 1981, as amended by Agreement dated June 28, 1985.

(a) Road freight crews may be required at any point where yard crews are employed to do any of the following as part of the road trip, paid for as such without any additional compensation and without penalty payments to yard crews, hostlers, etc:

* * *

(2) Make up to two straight pick ups at other location(s) in the initial terminal in addition to picking up the train and up to two straight set-outs at other location(s) in the final terminal in addition to yarding their train; and, in connection therewith, spot, pull, couple or uncouple cars set out or picked up by them and reset any cars disturbed.

FINDINGS AND DISCUSSION:

The Claimants in this matter submitted a claim for payment of eight (8) hours pay in addition to payment for their service trip, claiming the pick up, performed in this manner, constituted general yard switching. The claim was denied. It was then duly processed up to and including the Senior Director - Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property, who denied the appeal by letter dated December 19, 1990. Failing to reach a mutually satisfactory decision in this matter, the parties agreed to submit this dispute to Special Board of Adjustment No. 910 for adjudication.

The Board finds that the Organization and the Carrier in this dispute are,

respectively, Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over this dispute.

The Organization argues that the matter at issue was put to rest by Side Letter No. 8 to the October 31, 1985 National Agreement, which reads, in pertinent part, as follows:

> "This refers to Article VIII, Section 1(B), of the Agreement[2] of this date which provides that only two straight pickups or setouts will be made. This does not allow cars to be cut in behind other cars already in the tracks or cars to be pickup from behind other cars already in the tracks. ...."

The Organization maintains that as the language of Article VI§1(a)(2) of the parties' Agreement is identical to that of Article VIII§1(b) of the National Agreement, the interpretation set forth in the above cited Side Letter must be accepted. The Organization argues that if the Board finds otherwise, it would be granting relief to the Carrier [Conrail] that would be above that granted to other carriers. The Organization also insists that the Carrier's interpretation of what constitutes a "straight" move in this matter is contrary to what has been long understood in the railroad industry. The Organization maintains that the move made by the Claimants constitutes general yard switching, and cites to Award No. 432

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[2] Article VIII, Section 1 - Road Crews, (b) of the Agreement of October 31, 1985 between railroads represented by the National Carriers' Conference Committee and employees of such railroads represented by the United Transportation Union reads as follows:

> (b) Make up to two straight pick ups at other location(s) in the initial terminal in addition to picking up the train and up to two straight set-outs at others location(s) in the final terminal in addition to yarding their train; and, in connection therewith, spot, pull, couple or uncouple cars set out or picked up by them and reset any cars disturbed.

of this Special Board of Adjustment in which Neutral Member Harold Weston found:

> "While the movements in question may well have been necessary in view of the six cars location.... the work that the claimants performed in order to change direction was yard work that is not covered by Section 1 (a) (2) of Article VI. The pickup was not a straight pickup...."
>
> "The move was operationally and economically desirable but not within the jurisdiction of a road crew."

For all of the above stated arguments and reasons, the Organization asks that the claim be sustained.

The Carrier argues that it cannot be held to the interpretation of Article VIII, Section 1(b) of the October 31, 1985 National Agreement made in Side Letter No. 8 because Article VIII of the National Agreement is not identical in its entirety to Article VI of the agreement between the parties. The Carrier further insists that the work performed by the Claimants fits the definition of the work described in Article VI, §1(a)(2). The Ramp Tracks and Ford Yard are two separate locations within the initial terminal (North Jersey Consolidated Terminal). In support of this position the Carrier cites to Award Nos. 144, 322, and 344 of this Special Board of Adjustment, and Award Nos. 151, 589 and 638 of Special Board of Adjustment No. 894. The Carrier also maintains, contrary to the assertions of the Organization, that the work performed by the Claimants does <u>not</u> constitute "general yard switching." In support of this position, the Carrier cites to Award No. 1132 of Special Board of Adjustment No. 894, in which Neutral Member Harold M. Weston found that:

> "... The difference between the two cases is the absence of spotting in the instant case. ... Award 935 sustained the similar claim because it showed that the cars had been spotted; Petitioner's failure to do so here is a compelling distinction between the two cases."

And the Carrier cites to Award No. 408 of this Special Board of Adjustment, in which Neutral Member Fred Blackwell found:

> "The movement in question thus involved the yarding of the Claimants' train at two separate locations at the final terminal, as authorized by Rule 7, Section 1(a)(2) of the June 28, 1985 Agreement. Hence, such movement was not in violation of any cited provision of the Schedule Agreement.
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> "Beyond this it is noted that consideration has been given to the Organization's argument that ... 'the set-out was not a straight set-out as specified and required by Rule 7' The Organization's argument for this proposition is that 'restrictions on holding onto cars while making pick-ups or set-outs at the initial and final terminal;' was the practice on Conrail prior to the June 28, 1985 Agreement and that the Organization has not relinquished these restrictions.
>
> "However, the Board finds no record evidence showing the existence of the alleged prior practice or of an agreement that applied restriction on holding onto cars while making set-outs at the final terminal and hence, the Board finds unpersuasive the Organization's arguments concerning such alleged restrictions."

The Carrier also cites to Award No. 1461 of Special Board of Adjustment 894 in which Neutral Member Irving T. Bergman found that a straight set out could be made in two movements. Finally, the Carrier emphasizes that the burden of proof in this case rests with the Organization and that it has failed to prove that the Carrier violated the Rules of the Collective Bargaining Agreement. It again cites to numerous Awards in support of this assertion. For all of the above stated arguments and reasons, the Carrier asks that the claim

be denied.

Careful attention was given to all of the Awards cited by both the Carrier and the Organization. It is noted that the majority of the Awards cited by the Carrier deal with making a determination as to whether the locations of the moves in dispute constituted 'other locations' within the meaning of Rule 7. Such argument is not being raised herein, therefore, these cases cannot be considered dispositive of the matter at issue.

In the instant matter, the Claimants are requesting one day's pay for performing irregular service at their initial terminal on February 8, 1990. They claim that the manner in which they picked up car CR 279392 constituted general yard switching, and, as such, is not encompassed by Rule 7.

Rule 7 (a) specifies work that "road freight crews may be required at any point where yard crews are employed to do ... as part of the road trip, paid for as such without any additional compensation and without penalty payments to yard crews, hostlers, etc." On its face, the intent of this provision is to specify the type of work that road freight crews may do as part of a regular assignment, without incurring any additional pay and without causing other employees to claim that their work was being improperly performed by members of this bargaining unit. The portion of this Rule relevant to this dispute is from

Article VI (a)(2) which reads, in pertinent part:

> (2) Make up to two straight pick ups at other location(s) in the initial terminal in addition to picking up the train ... and, in connection therewith, spot, pull, couple or uncouple cars set out or picked up by them and reset any cars disturbed.

This portion of the Rule is identical to Article VIII, Section 1 (b) of the National Agreement dated October 31, 1985. This specific section of the National Agreement was interpreted by Side Letter No. 8. This Side Letter specifically states that "This does not allow ... cars to be pickup from behind other cars already in the tracks." Although the Carrier argues that it cannot be held to this Side Letter interpretation on the basis that the *entire* Article is not identical; as the Side Letter specifically interprets only that one segment of the Rule, Article VII, Section 1(b) which is verbatim to that of Article VI (a)(2) of the Agreement between the parties herein, the Carrier's argument must fail. As the interpretation specifically prohibits the type of move made in the instant dispute, the claim must be sustained.

AWARD

Claim sustained.

R.D. Snyder
Organization Member

Jeffrey H. Burton
Carrier Member Dissent attached.

John M. Skonier, Esq.
Neutral Member

Date of Award: 7/10/95

Dissent to Award No. 643 of Special Board of Adjustment No. 910

Here the majority has returned to the old yard vs. road arguments of years past. The negotiation of Article VI was intended to give Conrail relief from the burdensome rules of the past and the ability to compete effectively in the transportation marketplace. This decision defeats the purpose of the new rule construction by placing undue and unwarranted restrictions on the Carrier.

Letter No. 8 of the National Agreement cited by the Employees was not adopted by Conrail in the June 28, 1985 Agreement and cannot, therefore, be interpretative of the June 28, 1985 Agreement. Had the parties intended to incorporate Letter No. 8 of the National Agreement into the Conrail Agreement, they easily could have done so. That they did not is irrefutable evidence that the restrictions contained in Letter No. 8 do not apply to Conrail.

For these reasons, we consider this Award to be erroneous and I, therefore, dissent.

J. H. Burton
Carrier Member