

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4069

UNITED TRANSPORTATION UNION

CSX TRANSPORTATION, INC.

AWARD NO. 44

Carrier File No. 4(92-1743)

Organization File No. 633-52

STATEMENT OF CLAIM

Claim of Conductor G.L. Toms, ID 447254, and
Brakeman L.M. Cunningham, ID 447093, for one (1) days pay
at yard rate on Penalty Ticket dated 04/28/92.

FINDINGS

The Organization's account of the incident giving rise to this claim follows. The Claimants yarded their train after arriving at the final terminal. Thereafter:

the Claimants were instructed, by the West Hump Yardmaster, to take the power from their Train and to couple the engine CSXT 7593 on the Open Track and place it on the Engine Track. When completed, they were instructed to place only the power from their Train, R-343-27, on the Eastbound Engine Lead. The distance between where the Claimants coupled to CSXT 7593, on the open track, to Engine track where they placed same is approximately 1 mile. There were numerous tracks that the Claimants could have used to reach the final destination of the Eastbound Engine Lead without having to make a detour movement in Cumberland Yard to move engine CSXT 7593 to the Engine Track.

The carrier's version is stated as follows:

Upon arriving at Cumberland, the Claimants yarded their train on #7 West Receiving Track, cut their engines from the train and proceeded to the enginehouse through

the Open Track. Claimants were then instructed by the West Hump Yardmaster to shove Engine 7593, (which was blocking the Open Track), to the enginehouse and place it on the service track and then put their engine on the Eastbound Engine Lead.

These two accounts are significant, because determination of the purpose of moving Engine 7593 is essential to resolution of the dispute. The Organization argues that there was no connection between the Claimants' assignment and the relocation of Engine 7593; that the work should properly have been performed by yard employees; and that the Claimants were improperly assigned to perform the task. The Carrier states that "Unit 7593 was setting on the Open Track and that the shoving of Unit 7593 was incidental to and in connection with the disposal of the crew's locomotive consist".

In the claim handling procedure, the Carrier, however, did not provide convincing evidence that the movement was "in connection" with the Claimants' assigned work. Rather, the on-property argument was that the yard crew could properly be assigned such "incidental" work and that movement of an engine, in contrast to cars, cannot be considered "yard switching".

Directly at issue is Article VIII of the 1985 UTU National Agreement. Section 3 - Incidental Work, reads in pertinent part as follows:

(b) Road and yard employees in engine service and qualified ground service employees may perform the following items of work in connection with their own assignments without additional compensation:

(2) Move, turn, spot and fuel locomotives

While this provision encompasses broad duties in connection with locomotives, the qualifying phrase is "in connection with [road employees'] own assignments". The Carrier offers numerous instances of denial Awards relating to "incidental" work, but virtually without exception these involve either addition, reduction or exchange of power for the crew's assignment or the movement of locomotives or cars essential to permit the crew to complete its assignment.

The Organization contends throughout this dispute that the movement of Engine 7593 was not in connection with the yarding of the Claimant's train, and the Carrier does not take issue with this. Further, the Organization contends that the subsequent movement of Engine 7593 was not required for the purpose of permitting disposal of the Claimants' power consist. The Carrier's submission hints that the movement may have been required for this purpose but does not clearly and convincingly so state. Further, the on-property responses could have demonstrated -- but did not -- that it was necessary to move Engine 7593 in order for the Claimants to complete their assignment.

Section 3, Incidental Work, cannot be read without regard to the limiting connection to the employees' "assignment", which was, of course, to complete its road trip. The movement of Engine 7583 simply was not shown to be involved with that assignment.

A W A R D

Claim sustained. The Carrier is directed to make this Award effective within 30 days of the date of this Award.

Herbert L. Marx, Jr.

HERBERT L. MARX, Jr., Chairman and Neutral Member

Robert J. Will

ROBERT J. WILL
Employee Member

Lloyd Kell

LLOYD KELL
Carrier Member

NEW YORK, NY

DATED: 3/8/25