

## PUBLIC LAW BOARD 5658

Case No. 61  
Award No. 61

**PARTIES** United Transportation Union  
**TO** and  
**DISPUTE** Burlington Northern Railroad Company

### STATEMENT OF CLAIM

Claim eight hours pay, at the appropriate rate, for the Twin Cities Foremen and Helpers listed on Attachment A to this claim, for the dates indicated, in addition to all other compensation received.

### FINDINGS

These are claims by BN yard crews who delivered cars in interchange from BN Northtown Yard to Soo Line St. Paul yard. On six of the claim dates, after placing the interchange delivery on the designated interchange track, Claimants were required to remove a dead-in-tow locomotive (or locomotives), which were part of the interchange delivery and not part of their power, from the interchange track, and deliver that equipment to a non-interchange track within the Soo Line diesel facility. On the other three claim dates, after delivering their interchange cars to the designated interchange track, Claimants were required to pick up a dead-in-tow locomotive (or locomotives) from a non-interchange track within the Soo Line diesel facility and double that equipment to the designated interchange track containing equipment destined to BN. In all nine instances, the designated interchange track was of sufficient capacity to hold the dead-in-tow engine or engines as well as the rest of the interchange delivery.

These claims are slightly different in fact but similar in principle to the claims decided by the Board in its Award No. 2., dated October 25, 1995. In those claims, the Soo Line crew made the interchange delivery to the BN Northtown yard, and were there required to pick up a dead-in-tow BN locomotive from the BN diesel facility. The claims there were by BN yardmen allegedly deprived by Soo Line employees of BN yard work in the BN yard; the claims here are by BN yardmen because of being required to perform yard work in the Soo Line yard allegedly belonging to Soo Line employees.

We are satisfied that despite the factual difference described, our reasoning in Award No. 2 applies equally to the case now before us and that the claims should be sustained on the basis of that reasoning. We incorporate that reasoning in toto here, but quote particularly the following paragraph, which although the positions of the BN and Soo Line crews are reversed, is applicable to the situation in the instant case:

"The Soo Line engine picked up from the Diesel facility was not to be used for power in connection with the interchange movement; it was simply to be

Soo Line property in the same manner as all of the other cars which had been placed by Carrier's yard forces on the designated interchange track. Under these circumstances, it too should have been placed there by Carrier's yard forces, not by the Soo Line crew, which was limited in function to delivering and picking up cars to and from designated interchange tracks."

Carrier also brings to our attention, for the first time, Award No. 24479 of NRAB First Division, dated July 21, 1995, involving a claim by BN engineers based upon facts which appear to be identical to those in the UTU claims before us in this case. Award No. 24479 was decided between the time the case which resulted in our Award No. 2 was argued to the Board and the date the Award was rendered; it was not brought to the attention of the Board at that time. Award No. 24479 denied the claims of the BN engineers on the ground that the set out of the locomotive power was permissible under Article VIII, Section 3(b) of the 1986 Award of Arbitration Board No. 458, which reads:


"Section 3 - Incidental Work. Road and yard employees in engine service and qualified ground service employees may perform the following items of work in connection with their own assignment without additional compensation:

(b) Move, turn, spot and fuel locomotives."

Article VIII, Section 3, of the UTU 1985 National Agreement is the same as Article VIII(3)(b) of the Engineers' Agreement relied upon by Award No. 24479; accordingly, Carrier argues, that Award governs this case and requires a denial award.

We find ourselves in respectful disagreement with the conclusion of Award No. 24479. Article VIII(3)(b) was argued by Carrier to the Board in the case which resulted in our Award No. 2. We rejected there and do so again here the notion that the setouts and pickups of the dead-in-tow locomotives, performed by crews delivering or picking up in interchange, were "work in connection with their own assignment." We find the case governed by the reasoning set forth in Award No. 2, not by Article VIII(3)(b), and that reasoning requires a sustaining award.

Award: Claim sustained.

  
H. Raymond Cluster  
Neutral Member

  
Gene L. Shire  
Carrier Member

  
D. B. Snyder  
Employee Member

9/30/96