

CARRIER FILE NO. 9502388
ORGANIZATION FILE NO. C96-0246

PUBLIC LAW BOARD NO. 5912

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION))	
VS)	NMB CASE NO. 125
)	AWARD NO. 125
UNION PACIFIC RAILROAD CO.))	

STATEMENT OF CLAIM:

Claim of North Platte Conductor G. L. Stoddard for a basic day account handling units in the final terminal on July 15, 1995.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

The dispute comes before this Board based on a time claim submitted by claimant wherein he seeks payment for a basic day account handling units in his final terminal. The basic facts involved are that upon arrival of the train at North Platte the crew was instructed to yard their train on East Receiving #2, to cut the trailing unit (CNW 8714) from their three unit consist and set it to East Receiving #4 where there were eight other units.

Claimant infers that when the unit was placed in East Receiving #4 it was coupled to the 8 other units and all units were then moved to the South Diesel Track for servicing. This is the basis for his claim for a basic day for performing hostler service.

Carrier has directed the attention of this Board to the time slip submitted by claimant's engineer and notes that there is a difference between the two time slips. The Engineer's time slip indicates the unit placed in East Receiving #4 was coupled to the 8 units thereon and that the nine units were then returned to the train in East Receiving #2, following which an air test was performed and thereafter all eleven units were taken to the South Diesel track for servicing.

While there is a difference in the original time slips presented by the claimant and his engineer, the Board does not find the difference; that is, whether the units were moved from East Receiving #4 direct to the South Diesel Track or if they were first moved from East Receiving #4 to East Receiving #2 before being

"(a) Pursuant to the new road/yard provisions contained in the recommendations of Presidential Emergency Board No. 219, as clarified, a road crew may perform in connection with its own train without additional compensation one move in addition to those permitted by previous agreements at each of the (a) initial terminal, (b) intermediate points, and (c) final terminal. Each of the moves - those previously allowed plus the new ones - may be any one of those described by the Presidential

- 3 -

In its position before this Board Carrier emphatically states, "The agreement provisions were clearly followed" and since the issue is not a new one, has pointed to several prior awards rendered on this property which it contends supports Carriers position in this dispute.

In the Organization's argument we find that it takes the position that "the awards cited by the Carrier are not 'on point' with the instant dispute." The Organization then reviews the cited awards and alludes to the differing circumstances in that in each instance "the units handled by the claimants were either a part of the inbound unit consist or became part of the outbound unit consist of the claimant's train."

The Organization has also referred to several awards which it contends support its position that what occurred in this case is not permitted under the specific language of the National Agreements and it has referred to Award No. 81 of Public Law Board No. 4975 where it was held:

"The Chairman of this Board was also Chairman of PEB 219. Nothing in the record of PEB 219 supports the Carrier argument that the recommendations of that PEB gave Carrier the right to combine road and yard work except where the work was performed in connection with the regular road assignment of the crew." (underscore added)

The Organization further cites First Division Award No. 24828 wherein it was held:

"This Board concludes that Carrier erred when it assigned claimant to a new set of units and a new out of cars (not connected with his original assignment). Carrier inappropriately assigned claimant to yard work not connected with his regular assignment. Such assignment is not permitted under current agreement language."

See also Award No. 4 of PLB 5907, Award No. 44 of PLB 4069 and First Division Award No. 24856.

It is obvious that there is a major difference between the parties over the meaning and intent of the language "in connection with their own assignment" as used in the 1991 National Agreement. In the particular case before us Carrier would have the Board believe that when the 8 units in East Receiving #4 were brought

Award No. 125

-4-

back to East Receiving #2 and coupled to the existing units in East Receiving #2, such units then became part of claimant's assignment. On the other hand, the Organization would have the Board believe that there was no connection between the 8 units sitting in East Receiving #4 and claimant's assignment which was to yard his train and deliver his 3 units to the South Diesel Track.

It is the opinion of this Board that the position set forth by the Organization carries more weight. The 8 units here involved were not in any way connected to the assignment of claimant's inbound train. The pick-up of the 8 units and delivering them to the Diesel Track is not permissible under the existing rules. Since the movement was not one allowed, the claim must be sustained.

Carrier has argued to this Board that there is no basis for allowing a claim such as this, however, this position is contrary to the many awards of the various tribunals established under the Railway Labor Act which have held that the payment of a day's pay is proper to uphold the agreement; i.e., absent such penalty the agreement could be violated with impunity. This Board believes that payment of the claim here involved is correct and proper.

AWARD

Claim sustained. Carrier is instructed to comply with this award within 30 days of the date hereof.

F. T. Lynch
F. T. Lynch, Neutral Chairman

C. J. Sosso *dissenting*
Catherine J. Sosso, Carrier Member

A. Martin
A. Martin, Employee Member

Award date 8-22-00