PUBLIC LAW BOARD NO. 6027

Case No. 2
Award No. 2

Parties to dispute:

United Transportation Union
And
Duluth, Missabe and Iron Range Railway Co.

In the matter of request for reconsideration of Award.

The Carrier requested an executive session to reconsider the Award, and the parties were asked to meet and discuss the matter. They did so, even delaying and conferencing after election of a new general chairman, and no mutual agreements could be reached.

On February 16, 2001, the parties were told that briefs would be accepted if there was additional information in their possession that was not considered or presented orally or by brief in the initial hearing.

The Carrier submitted a brief dated March 21, 2001, which has been thoroughly reviewed.

We do not find that it has presented information either not considered after the initial presentations or of weight sufficient to cause any change in the original award.

The process has afforded the parties more than ample opportunities to present their positions, and they have ably done so, and the September 29, 2000, award is affirmed.

Dated this 24th day of September, 2001, at Duluth, MN.

John B. Criswell, Neutral Member

CARRIER'S DISSENT TO AWARD NO. 2 PUBLIC LAW BOARD NO. 6027

MR. JOHN B. CRISWELL, NEUTRAL MEMBER

There is an obvious error in the language of this award. We suspect the arbitrator saw in the case before him a simple sustaining award on the basis that, in the record before him, the carrier denied the claims primarily on the grounds that the ore docks were a separate point and thus not within the work area of the yard engine. Carrier did not strenuously defend the moves made as permissible for road crews to make under the applicable national and local agreements because, while the claim was considered on the property, the union never detailed what the crews did that the union considered switching. The arbitrator found that the claims were valid because the parties had agreed to extend switching limits to include the ore docks and thus the road crew performed yard work within switching limits where a yard engine was on duty. He found on the basis of the record that the road crew "...commenced separating the train and positioning drafts of equipment onto the ore docks for unloading. When the unloading was completed, claimants reassembled the train and took it from the Ore Dock Yard to Proctor Yard where they were released from duty." It is clear that he considered the "facts", sketchy as they were, sufficient to justify the conclusion that the road made more than the three moves the agreements permit.

While the record did not contain evidence to warrant these factual findings, once the Board so held, the case should have ended there. However, in making this finding and writing the opinion, he did not stick to the subject at hand. Uncharacteristically, after finding for the union, Mr. Criswell ventured into an irrelevant discussion of whether

"unloading of equipment" was covered by the provisions of national agreements that permit road crews to work within switching limits. Since he already impliedly held that the crews made more than three moves, there was nothing more to say. Nonetheless, he said:

> ... We find no agreements that allow road crews to participate in loading and unloading of equipment while yardmen are so on duty. Further, we do not find agreement support for road crews to move, separate and position equipment for unloading ...

This language is directly contradicts the language of Article VIII, Section 1(b) of the October 31,1985 National Agreement:

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

In 1991, the Harris Board and ultimately DM&IR agreements broadened this permit. The Harris Board lifted the restriction that set outs/pick ups had to be "straight". The Board said the moves could be set-outs ***and*** pick-ups. The Board said the work could be done at initial, intermediate, and final points of the run. The Board said, "Each of the moves – those previously allowed plus new ones – may be any one of those prescribed be the Presidential Emergency Board ...". The new provisions also permitted crews to couple and uncouple cars. Article VII Section 1 (a) on the November 1, 1991 UTU Implementing Document reads:

> (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 prescribed by the Presidential Emergency Board: pick-ups, set-outs, getting or leaving the train on multiple tracks, interchanging with foreign railroads, transferring cars within a switching limit, and spotting and pulling cars at industries.

The Harris Board added several "new ones" including spotting cars for loading/unloading at industries. The addition of a new right to spot cars for loading/unloading at an industry did not take away the previously granted right to spot cars within switching limits.

Upon receipt of proposed Award No. 2, the Carrier requested an executive session. The Arbitrator instead allowed briefs. The carrier's brief was devoted almost exclusively to citation of agreements and awards that make clear that road crews may participate in loading and unloading of equipment [freight cars] and to move, separate and position equipment [freight cars] for unloading while yardmen are on duty without additional compensation. Our sole request was that the Arbitrator expunge the disputed language – not, as one might assume, change the result. However, he refused to expunge the erroneous language from his "Opinion of Board".

We dissent to the award and we take exception to the Board's refusal to expunge the erroneous language in the "Opinion of Board."

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Carrier Member

ORGANIZATION'S Concurring OPINION

In response to Carrier member's written dissent to the Board's decision
in
THE CASE OF AWARD NO. 2
PUBLIC LAW BOARD NO. 6027

The Board's conclusions in this case are faultlessly logical and entirely correct considering the underlying basis for the Board's decision, which are; the language of the Agreement, prior Awards interpreting the Agreement language, and the intentions of the P.E.B. originally responsible for crafting said language.

In this case Carrier required road service crews to assist with the unloading of iron ore, inside the confines of switching limits, at a time and place when yard service crews were on duty. This decision correctly interprets the Agreement to prohibit road crews, while yardmen are on duty, from participating in the loading and unloading of equipment and moreover prohibits road crews from moving, separating, and or positioning equipment during actual loading/unloading processes.

Carrier Member's dissent demonstrates either a fundamental misunderstanding of the issues, or perhaps a certain determination to ignore reality and, not withstanding the evidence, continue the quest for unjustifiable interpretations of existing Rules and Agreements. Curiously, the Carrier Member asserts that it is not his intent to change the results of this Award, although he does just that, based on statements suggesting that the claim should have been sustained, given the factual circumstances of the case, but for reasons other than as set forth in the findings.

Albeit, in defense against the claim Carrier formerly argued that yardmen were not on duty, when they obviously were, and that Carrier's ore unloading docks are a customer within the meaning of the Rules, when they certainly are not, Carrier most forcefully progressed and defended it's position that the complained of service, i.e. participating in the actual ore unloading process, was entirely permissible under existing Rules and Agreements. The Arbitrator thoroughly considered and rejected each of Carrier's arguments, leaving no questions unanswered. To do otherwise would merely foster additional disputes and further disagreements as to the requirements of the Agreement. If, in Carrier's opinion, the existing Rules and Agreements are no longer suitable, the proper means to secure a change is through the give and take of collective bargaining, not by way of an arbitration decision.

What really happened in this case is that the Carrier decided to gamble on a number of radical and totally untenable positions, using a scatter gun approach, for no purpose other than to use road crews when yard crews are required by Agreement Rules. As a result, yard crews were denied work that they have performed for as long as history records. This honorable Board has now adjusted the matter and upheld the Rules.

The Organization fully concurs with the Board's Findings and Award.

Respectfully submitted,

R L Marceau

R. L. Marceau
Organization Member