Case No. 1544

SPECIAL BOARD OF ADJUSTMENT NO. 894

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AS THE REPRESENTATIVE OF

T. D. TOTH

VS

CONSOLIDATED RAIL CORPORATION

DOCKET NO. CR-E-14108

CARRIER'S DISSENT

The Incidental Work Rule, Article VIII, Section 3 of Arbitration Award 458, does not enumerate each and every task included in incidental work. Rather, the Rule describes the type of ancillary service an Engineer may perform as part of his or her primary duty of operating a freight train in a safe and efficient manner. The work complained of in the instant claim has been established as "incidental" in previous arbitration awards which were cited in the Carrier's brief. The majority's opinion that changing ends of a locomotive consist is not work incidental to an Engineer's duties ignores established practice and previous arbitral precedents.

The organization never attempted to assert that other members of the crew were present and available to perform the incidental work. Therefore, Letter No. 7 was not violated with respect to Section 3(c). Furthermore, Letter No. 8 does not call for a sustaining award because no other qualified employee was shown to be available and the incidental work in question is not only contemplated in Section 3(c), but is part of the work described in Section 3(b). Pursuant to Letter No. 8, changing handles and radio equipment are task elements inherent in adding or separating or rearranging units. They are incidental work tasks in those instances and they are incidental work in the instant case.

In addition to the misconstruction of the incidental work rule, the majority failed to apply the proper standard to the phrase "available forces." The Claimant obtained his engines on the property of a foreign railroad where there were no Conrail mechanical forces available to service the engines assigned to the Claimant. The mechanical forces employed at this location were under the jurisdiction of a foreign carrier. The management of that railroad determined that none of the mechanical forces employed at Proviso Yard were available to service the Claimant's power. The employment of mechanical forces at a location does not make them available. There are limits to the amount of work a mechanical service team can perform at any one time. A railroad would be hard-pressed to operate in a timely fashion if it were prevented from making good faith determinations that on-duty mechanical forces were occupied and not available to perform additional service. Moreover, the organization readily admits in their submission that mechanical forces were not available because they were otherwise occupied on another track at the time the Claimant's train was scheduled to depart.

Finally, the rules cited in the organization's brief do not provide payment of a penalty day for servicing locomotives. Therefore, payment of eight hours for the complained of service is awarded without any basis in the Collective Bargaining Agreement. For all of the above reasons, the instant award cannot be considered precedential in any other case. I respectfully dissent.

P. C. Poirier