AWARD NO. 738
Case No. 738

System Docket No. CRT-9591
UTU File No.

SPECIAL BOARD OF ADJUSTMENT NO. 910

PARTIES) UNITED TRANSPORTATION UNION (T)
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TO)
)
DISPUTE) CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim for 8 hours for S. D. Rimpler on 02/13/93 while assigned to Traveling Road Switcher, WSMI-01. The Claimant was instructed to assist train, ELIN-2A, with its pick-up and set-off and to give this train an air test.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On date of claim, Claimant was assigned as brakeman on Traveling Road Switcher WSMI-01 at Marion, Indiana. During his tour of duty, Claimant was required to couple to the rear of Train ELIN-2A, a through freight in the Indianapolis-Elkhart Pool, pull it around the wye from the Red Key Secondary to the Marion Branch, and assist it with its pick up and set out at Marion. To accomplish this, it was necessary for Claimant to remove the marker from ELIN-2A and replace it when the work was done. Claimant was then required to perform a visual air test. This work was performed during

the hours that yard crews were not on duty. Claim was made for performing the air test on a train other than his own.

The Organization contends Claimant is entitled to the relief sought in accordance with Award No. 318 of this Board. That case involved the crew of a traveling road switcher coupling the air hoses and performing an initial terminal air test on cars to be picked up by another road crew.[1] This work was performed at a point where yard crews are not employed. Although this Board agreed with Carrier that the road switcher crew could perform yard work at points where yard crews were not employed, such work was limited to that which is in connection with their own train. The Board, in sustaining the claims for a day's pay for performing the air tests on cars to be picked up by another train, wrote:

> We are not persuaded, however, that [Rule 7(c) of the Agreement or Article IX Section 2 of the June 28, 1985 Agreement] provide a sound basis for requiring road crews to perform any and all yard work for trains that are not assigned to them. In the absence of a contract provision covering that specific situation, we are not prepared to hold that the contracting parties' intent was to eliminate that critical distinction.

The Organization also cites Award No. 365 of this Board, a case involving a road crew being required to move engines blocking the power consist of their own train. In sustaining the claim, the Board held:

> In any event, this Board is unable to conclude that Section 2 of Article IX of the June 25, 1985 Agreement, . . . , may be read so as to hold that the work made the basis of the instant claim may be properly considered as incidental to an assignment. In reaching this conclusion the Board does not dispute the Carrier position that not all "tasks" or "work incidental to or in connection with an assignment" have been listed in Section 2. However, we think it must be considered that those tasks which have been identified by the parties in Section 2 appear to involve work related to an individual's own assignment. . . .

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[1]The Carrier Member dissented to the Board's finding in Award No. 318 on the basis that Claimants were required to perform a transfer train and yard test on the cars, while the terminal air test was performed by the crew picking up the cars.

> In regard to the remaining tasks specifically identified in Section 2, i.e., the inspection of cars or locomotives, the bleeding of cars, the coupling and uncoupling of hose or control cables, *and the performance of air tests* [emphasis added]. Here, the Board would note that in its Award No. 234, with this referee participating, albeit the Carrier Member offered a vigorous dissent, it was held that although a road crew could be required to perform such work in connection with their own train, that is was not the intent of such rules to have roadmen perform such work on other than that train to which they were assigned to work.

Carrier, on the other hand, cites Award No. 560 of this Board, wherein the Board denied the Organization's claim for an additional day's pay when a through freight crew, at an intermediate point, after setting out cars for interchange was instructed to pick up cars from one track and set them out on two other tracks. Because no yard crew was employed at that location, the Board found that Rules 7(a)(2) and (3) were not implicated. With regard to Award No. 318, the Board concluded:

> Also, this case is distinguishable from Award 318 of this Special Board of Adjustment 910, which is relied upon by the Organization. In that case, the crew of a traveling road switcher performed air hose couplings and initial terminal air tests on cars which were not part of their train. The Carrier maintained that these services were merely incidental to the crew's assignment which were authorized by Article IX, §2 of the June 28, 1985, Agreement. That provision, as the Board found, restricted the number of road and yard crews from performing any work that was not incidental to or in connection with their assignment. In the present case, neither party has cited nor relied upon Article IX of the above-referenced Agreement, nor does the record support a similar finding. Rather, this is a case of a road freight crew picking up and setting out cars at a point where no yard crews are employed, which is permitted under Rule 7(c).

In this case, Article IX is squarely before the Board because the Carrier has asserted that the work performed was the type of incidental work permitted by that provision. Thus, we must distinguish this dispute from Award No. 560. The dispute, rather, is directly in line with Award No. 318, as well as Award No. 356, which limit the performance of incidental work to the employees' own train. The principle of *stare decisis* requires us to follow Award Nos. 318 and 356 unless we can find that they are patently erroneous. We have no reason to overturn those Awards. Here, the work was

performed on another crew's train, which is not permissible. Accordingly, we must find that the Agreement was violated.

AWARD: Claim sustained. Carrier is directed to comply with this Award within forty-five days.

Barry E. Simon, Neutral Member

P. C. Poirier, Carrier Member

~~R. D. Snyder~~, Organization Member
B Wiggins.

Dated: October 26, 1996
Arlington Heights, Illinois

I DISSENT. CLAIMANT(S) MAY PERFORM ANY WORK WHERE NO YARD CREWS ARE EMPLOYED PURSUANT TO RULES 7 & 35. NOTHING IN ARTICLE IX CHANGED THE CARRIER'S RIGHTS NOTWITHSTANDING. MOREOVER, AWARD NO. 365 INVOLVES A LOCATION WHERE YARD CREWS WERE EMPLOYED AND, THUS, HAS NO BEARING ON THIS CASE.