AWARD NO. 881
Case No. 881

System Docket No. CRT-9630
UTU File No. 1012008661

SPECIAL BOARD OF ADJUSTMENT NO. 910

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

STATEMENT OF CLAIM:

Claims of various Conductors and Brakemen for one-yard day's pay on each date and document listed account an alleged violation of Rule 7 at the initial terminal while assigned to WPME-70.

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 each date of claim, Claimants were assigned to Train WPME-70, a traveling road switcher assignment operating out of Metuchen, New Jersey. The Metuchen Terminal consists of two yards (Ford Yard and the Receiving Yard) that are connected by Amtrak trackage. The connecting trackage is controlled by Amtrak, which operates high speed passenger trains over it.

The facts in this case are not in dispute. When Claimants came on duty, they picked up cars at Ford Yard and then pulled them into the Receiving Yard. Once there, they set out the cars they

had picked up at Ford, ran around them and coupled the engine consist to the other end of the cut. Claimants then doubled onto another pickup at the Receiving Yard before departing Metuchen. Yard crews were on duty at this time.

The Carrier avers this move was necessitated by the geographical layout of the two yards. The only alternative, says the Carrier, is to make a reverse movement of approximately 2.5 miles from Ford Yard to the Receiving Yard. The Carrier rules this out because it would involve shoving over numerous road crossings in Amtrak Main Line territory and would exceed the time allotments given by Amtrak.

The Organization contends Claimants are entitled to an additional yard day's pay because they ran around their cars in the Receiving Yard. It relies upon Award No. 432 of this Board, which held as follows:

> Claimants were the regularly assigned train crew members of train MCSE-5 operating in through freight service from Dewitt to Selkirk.
>
> On the day in question, while at their initial terminal, they were required to pick up the six car mini oil train from the South Farm Track, a stub and track located at the fuel plant, pull to Diesel Service Track #5 at the fuel plant, cut off the cars and run around them. They then had to back west, recouple to the cars and proceed to Yard Departure Track #2 where they doubled to their train standing on the east end of Yard Departure Track #2. They then started on their road trip to Selkirk.
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> Claimants seek a day's pay for that work on the ground that it was yard service "not in keeping with Article VII Road-Yard Movement. Section 1(a)(2) of the Council-UTU [*sic*] Agreement." Section 1(a)(2) reads as follows:
>
> > "Rule 7 of the UTU (C&T) Single Agreement effective September 1, 1981, and Article F-s-1 of the UTU (E) Single Agreement effective September 1, 1981, are amended and restated to read as follows:
> >
> > (a) Road freight crews may be required at any point where yard crews are employed to do any of the following as part of the road trip, paid

for as such without any additional compensation and without penalty payments to yard crews, hostlers, etc. . . .

(2) Make up to two straight pick-ups at other locations (s) in the initial terminal in addition to picking up the train and up to two straight set-outs at other location(s) in the final terminal in 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."

Petitioner maintains that the Rule just quoted "does not contemplate having to run around a pickup and clearly states that it must be a straight pickup. As Petitioner points out, no emergency was involved in this situation.

It is Carrier's position that claimants simply picked up cars for their train at another location in the initial terminal in addition to picking up their train. In Carrier's view, the recoupling of six cars at the fuel plant was merely a continuation of the first pickup at the stub end track. Carrier makes the point that all of the crew's disputed movements were necessary in order to change direction and return to their original train.

Carrier cites SBA 894 Awards 858, 589, 556, 538 and 151, none of which concern the situation that is now before us.

While the movements in question may well have been necessary in view of the six cars location on the stub end track, the work that claimants performed in order to change direction was yard work that is not covered by Section 1(a)(2) of Article VI. The pickup was not a straight pickup and nothing in Section 1(a)(2) permitted Carrier to use road trainmen to make a pickup that called upon the crew to cut off and run around the pick-up and then recouple to it.

The move was operationally and economically desirable but not within the jurisdiction of a road crew.

There is no doubt that the service performed by Claimants was identical to that described in Award No. 432. Under the doctrine of *stare decisis*, therefore, we are compelled to follow that Award unless Carrier can demonstrate that the Award either is patently erroneous or is no longer applicable because of intervening changes in the Agreements.[1] The Carrier has not offered any

[1]The claim in Award No. 432 involved service performed on January 6, 1987. The dates of claim in this case run from August 7, 1991, through February 9, 1993.

Awards of this Board that have rejected the findings of Award No. 432. In fact, the only Awards cited by the Carrier that mention Award No. 432 do so either to distinguish it factually (Award No. 781) or to distinguish it on the basis of different language in the Agreement (Special Board of Adjustment No. 894, Award No. 1337, BLE and Conrail). Most significantly, we note the Carrier did not dissent to Award No. 432.

The Carrier cites Article IX, Section 2 of the June 28, 1985 Agreement and contends this provision allows road and yard crews to perform, without additional compensation, any work incidental or in connection with their assignment. This provision reads as follows:

> Section 2 - Incidental Work
>
> The members of road and yard crews may perform, without additional compensation, any work incidental to or in connection with their assignment. Such work may include but is not limited to such tasks as handling switches, crew packs, turning, spotting and moving locomotives for fueling or supplying, inspecting cars or locomotives, bleeding cars, coupling and uncoupling hose or control cables, performing air tests, making reports or using communication devices for any purpose.

In applying the contract construction principle of *ejusdem generis*, we cannot agree that the type of service involved in this case was the same sort of incidental work envisioned by the drafters of the June 28, 1985, Agreement. By the Carrier's reasoning, anything the crew is told to do in connection with its assignment might be considered incidental work. This rule was not written to give the Carrier such unrestricted license. We do not find the Awards cited by the Carrier on this issue to be persuasive as they do not involve running around cars. In fact, most of them involve situations specifically cited in the Incidental Work Rule.

Finally, with respect to dates of claim subsequent to February 18, 1992, the Carrier cites Article VII, Section 1(a) of the Agreement of that date, reading as follows:

ARTICLE VII - ROAD/YARD WORK

Section 1. Rules 7, 24 and 68 of the Collective Bargaining Agreement, as previously amended, are further amended to permit road crews to perform the following work without penalties to road or yard crews:

> (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.

While it is true this new provision eliminated the requirement that pick-ups and set-outs be straight pick-ups or straight set-outs (see Award No. 734), we do not find that relief to be applicable in this case. The cars Claimants ran around in the Receiving Yard had been picked up by them in Ford Yard, more than two miles away. The pick-up had been completed when they departed Ford Yard. Therefore, we cannot accept the theory that running around the cars was still part of the pick-up.

The February 18, 1992, Agreement, however, does provide Carrier relief in that it increased the number of moves that can be made at the initial terminal, and further permitted the Carrier to require an outbound crew to make set-outs at the initial terminal. In this case, the runaround move is nothing more than a set-out and a pick-up, even though the same cars are involved. With picking up their train at Ford Yard and the pick-up of the additional cars in the Receiving Yard, Claimants did not exceed the permissible number of moves under the Agreement. Thus, for those dates of claim subsequent to February 17, 1992, where no more than the three allowable pick-ups and/or set-outs

were made (considering the runaround to be a set-out and a pick-up), there is no violation of the Agreement. Those claims are denied. For the balance of the claims, the Board finds the Agreement was violated and sustains the claims.

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

Barry E. Simon, Neutral Member

P. C. Poirier, Carrier Member

Bruce R. Wigent, Organization Member

Concurring Opinion attached

Dated: July 23, 1998
Arlington Heights, Illinois

DISSENT ATTACHED

CARRIER'S DISSENT
TO AWARD NO. 881 OF
SPECIAL BOARD OF ADJUSTMENT NO. 910

Here the Board finds that the facts are identical to those in Award No. 432. However, there is at least one critically important difference. This case involves a traveling road switcher crew, whereas the Claimants in Award No. 432 operated in through freight service.

Traveling switcher service is paid the yard rate of pay because it is service which is comparable to yard service and the greater part of their tour of duty is performing switcher service. This is a job which by contract, must switch cars for more than four hours per day. To find that picking up and setting out cars of their own train (i.e., performing yard switching service) is some how restricted but for the relief obtained in the 1992 Agreement strains credulity. The Board has failed to distinguish between Rule 7-Performance of Service by Road Freight Trainmen and Rule 8-Traveling Road Switcher Service. Therefor, I dissent.

Peter C. Poirier
Carrier Member

ORGANIZATION MEMBER'S

CONCURRING OPINION TO

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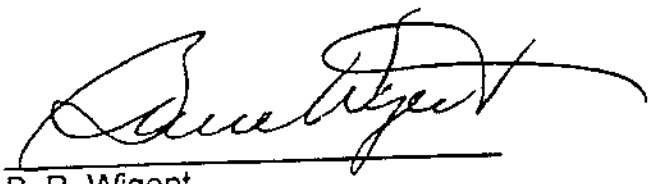
The Carrier's dissent is based on the erroneous conclusion that the rate of pay supersedes the line of demarcation in the parties' agreement in regard to road service vs. yard service. Irrefutably, a Traveling Road Switcher is a road assignment, therefore, Rule 7 governs, as it does to all road assignments in regard to the work a road assignment can perform at a location where a yard crew is on duty. A Traveling Road Switcher assignment differs from other road assignments in regard to the type of work performed in road territory, i.e., during the greater part of their tour of duty such assignments are engaged in the performance of switching service. Other differences, are the flexibility to run back and forth over the territory the assignment is advertised to work, and into and out of the terminal where the assignment reports. This is not so for road assignments engaged in other than Traveling Road Switcher Service, i.e., they are restricted to the limitations imposed under Rules 4 and 10 of the parties' agreement. The quid-pro-quo for the Organization in agreeing to the flexibility a Traveling Road Switcher assignment allows the Carrier vs other road service assignments, and because of the type of work involved in road territory, was the yard rate of pay. We did not negotiate for the yard rate of pay in exchange for eliminating the line of demarcation between road service and yard service within terminals where a yard crew is on duty, and the Carrier cannot point to any such exception in the parties' agreement.

Moreover, the Carrier has never before made such an assertion and the Traveling Road Switcher rule (Rule 8) has been in the parties' agreement since the agreement's inception on September 1, 1981.

The Carrier's dissent amounts to nothing more than an "off the wall" dissertation totally lacking in rule support. Conversely, the decision of the majority draws its essence from the clear language in the parties' agreements, which is the reason the undersigned wholeheartedly concurs in the findings.



B. R. Wigent
Organization Member