SPECIAL BOARD OF ADJUSTMENT NO. 894

AWARD NO. 1504

CONSOLIDATED RAIL CORPORATION

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: SUBJECT: Engineer A. R. Witzke, Claim Date: 5-12-90 - Claiming one penalty day unnecessary double.

STATEMENT OF FACTS: On May 12, 1990, Engineer A. R. Witzke (hereinafter claimant) was assigned on Train TV-25D, operating from Toledo, OH, to Detroit, MI. Following arrival at his designated final terminal claimant was instructed to pull his train into Track No. 3 in the south receiving yard. Thereafter, with his train in the clear at both ends, claimant's crew was instructed by the trainmaster to make a cut on the head sixteen cars and set them into No. 1 Van Strip. When the crew responded that their train was already in the clear the trainmaster restated his directive

and then avowedly stated, "I will sign the time slip." Therefore the claimant performed the maneuver as directed.

On May 13, 1990, Engineer Witzke submitted a penalty time slip, claiming one day's pay on the premise that the service performed at Detroit was in violation of Article F s 1 of the agreement. The claim was denied and subsequently handled in the usual manner up to and including submission to this Board for final resolution.

RELEVANT CONTRACT PROVISIONS: Article F-s-1 - Performance of Service by Road Freight Engineers reads as follows:

> (a) The established mileage and hourly rates applying to road freight engineers cover:
>
> * * * *
>
> (4) The setting off of a car or cars on the minimum number of tracks in separate yards at the final terminal between the point of entrance to the terminal to and including the final yard at which the last car or cars are disposed of.
>
> NOTE: For the purposes of this article, the crew's initial and final terminal shall be recognized terminals established by agreement or practice.

Article V - Road/Yard Movements reads as follows:

1. A road freight engine crew may be required to perform the following work in connection with its own train at points where yard crews or hostlers are employed:

* * * *

(b) Set out cars at one location within the limits of its final terminal in addition to the final yarding of its train.

Agreed Upon Question and Answer Number 1 reads as follows:

Q-1. In what sequence may the additional one straight pick-up at the initial terminal and the additional one straight set-out at the final terminal be made?

A-1: At the initial terminal, after picking up train and commencing outbound trip, the road crew may be required to make one additional straight pick-up at another location within the limits of its initial terminal in connection with its own train. At the final terminal the road crew may be required to make one straight set-out at another location within the limits of the final terminal before the final yarding of its train.

Letter No. 2, dated September 14, 1978, is quoted below:

LETTER NO. 2

September 14, 1978

Mr. J. P. Carberry, Vice President
Brotherhood of Locomotive Engineers
455 Empire Boulevard
Rochester, New York 14609

Dear Sir:

This will confirm our discussion and understanding reached during the negotiations for the single agreement for engineers mandated by Section 504(d) of the Regional Rail Reorganization Act of 1973, as amended.

It is understood that:

1. Where national agreements have been codified and put into the single agreement as a separate Article, it was not intended that the application or interpretation of such agreements would be changed. If some provision has been inadvertently omitted from such Article or language changed to give a different meaning, corrections will be made. If provisions of national agreements have been inadvertently omitted from the single agreement and are not otherwise provided for in the single agreement, they shall be considered as part of the single agreement.

2. Until the changes required by the provisions of the single agreement can be instituted, the present arrangements with respect to the services covered by the various pools and extra lists will be continued. The Local Chairman of the BLE and Managers-Labor Relations having jurisdiction will confer to make the required changes subject to our approval.

3. While all local rules have been superseded by the single agreement, it is recognized by both parties that certain areas may require specific handling due to local conditions. It was agreed that the Local Chairman of the BLE and the Managers-Labor Relations will review the local agreements and where they agree that conditions require, the matter will be forwarded to the General

Chairman and the highest officer of the Corporation for further handling.

* * * *

FINDINGS: Under the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

The credible evidence persuades us that this was not a necessary "double over" caused by limited track capacity; in our judgment the South Receiving Yard is a part of the Livernois Yard, not a separate yard as argued by the carrier. As a consequence the removal and repositioning of the sixteen (head end) cars constituted a compensable violation.

AWARD: Claim sustained. Carrier is directed to implement this award within 30 days of the effective date hereof.

DON B. HAYS, Neutral Member

P. C. POIRIER, Carrier Member

J. A. CASSIDY, JR., Organization Member

1-5-96
DATE