

SPECIAL BOARD OF ADJUSTMENT NO. 235

AWARD NO. 2913

Docket No. 7093

UTU Case No. F451-528-3

C&MNT File No. 2-8-1909

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

and

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

STATEMENT OF CLAIM:

Claim of Brakeman R. M. Elli, Wisconsin Division, for a day's pay at prevailing straight time yard rate for switching service performed at Janesville, Wisconsin on February 10, 1976. Request and claim based on provisions of Yard Rule 3 and Road Rule 43 of the applicable schedule.

FINDINGS:

This Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended that 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 employed as a brakeman on Train No. 596 operating between South Janesville, Wisconsin and Proviso, Illinois. Shortly after Claimant came on duty at South Janesville, another train arrived (No. 599) and Claimant assisted that train in making a set out there. It is generally agreed, Claimant assisted train No. 599 by lining a switch or switches and making the cut for the set out.

Carrier contends Claimant volunteered to assist the other train in making their set out but the Union contends he was instructed by the Trainmaster to do so.

Claimant in his time claim of February 10, 1976 states:

"On duty 5:00PM on 596, when instructed by WD-18 Mr. Dove, Trainmaster, South Janesville to line switches and make cut on 599's setout."

The Trainmaster (Mr. Dove) in his letter of explanation states:

"Mr. R. M. Elli's claim is invalid. I asked if he could help out 599 because they wanted to get out A.S.A.P. This man was not required to do anything."

I only asked if he wanted to help out. This was just common curiosity. Mr. Elli did line switch #9 and the derail for 599 and he did make a cut on 599 as I was there with him because I asked him if he wanted to help out but he was never instructed that he had to do anything."

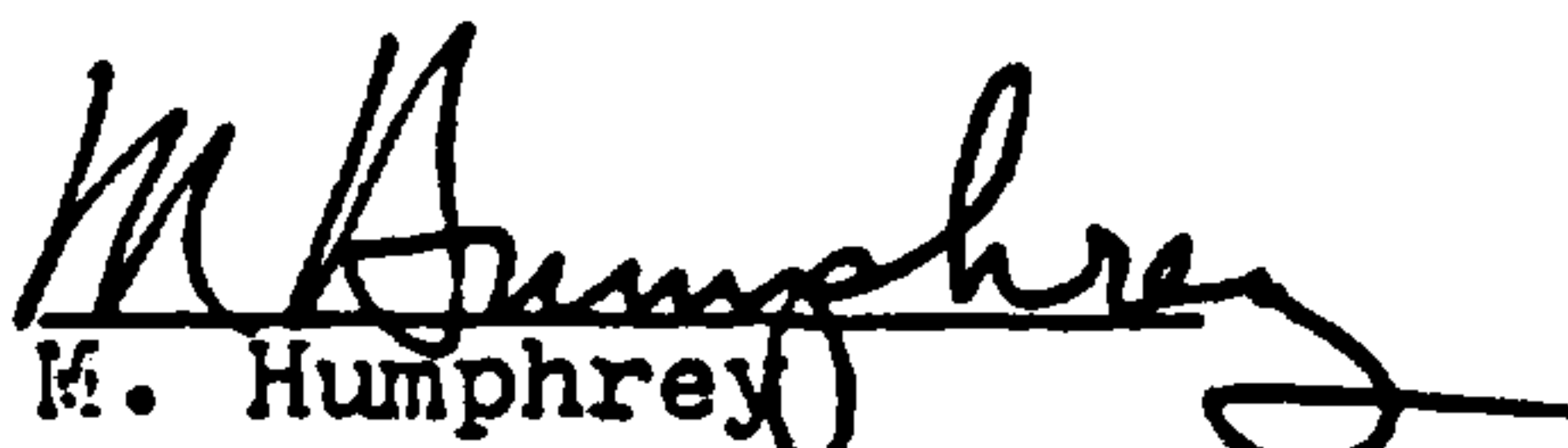
Whether the trainmaster asked or instructed Claimant is a fine line, for most employees will respond when an official asks them to do something then stays with him to see it done. In any event, Claimant did work off his assignment, performing service generally recognized as belonging to others and therefore the Board finds the claim to be valid.

AWARD

Claim sustained.

ORDER:

Carrier is directed to make this Award effective within 30 days of date of issuance shown below.


M. Humphrey
Carrier Member


G. R. Maloney
Employee Member


Walter L. Chipps
Chairman and Neutral Member

Issued this 3rd day of December, 1985