

SPECIAL BOARD OF ADJUSTMENT NO. 235

DOCKET NO: 8274  
AWARD NO: 2693

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION  
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

Statement of Claim:

"claim of various conductors, Peninsula District, for a day's pay at the prevailing road rate account required to perform service outside of the scope of their prescribed duties at the initial or final terminal of their assignment when compelled to install and transport battery packs on the listed dates of claim. Claim based under the provisions of Road Rule 43."

FINDINGS: This Board upon the whole record and all the evidence, finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

This dispute arose as the result of a change in the kind of rear marker lighting devices on cabooses in November, 1980, and the resulting requirement by Carrier that conductors transport the portable battery pack which supplied power for the markers from the yard office to the caboose at the initial terminal and from the caboose to the yard office at the final terminal.

There is no dispute that it has always been and still is the conductor's responsibility to see to it that rear markers are properly displayed on cabooses. From about 1868 to 1963, these rear markers were oil or kerosene lamps; in 1963, the kerosene lamps were discontinued and were replaced by reflector-type markers. At all times prior to the Pooling Caboose Agreement of 1959, each conductor was assigned a particular caboose which was used solely by him and his brakemen and not by any other crew. During that period, the marker lamps were kept on the caboose at all times and it was the responsibility of the conductor to see that they were properly maintained and displayed. There is some dispute between the parties as to whether after the inception of the Pooling Caboose Agreement in 1959 up until change to reflectorized markers in 1963, conductors ever removed rear marker lamps from the caboose. The Organization states emphatically that the marker lamps were never taken from the cabooses. The

Carrier states that with respect to passenger trains, the conductors during this period always left their markers in the station for safe keeping, and that some freight conductors also left their markers in the yard office for the same purpose.

From 1963 until approximately 1978, reflectorized markers were used, which required no handling by conductors. In 1978, the Federal Railroad Administration passed new regulations requiring lighted markers on the rear end of freight trains. From 1978 until November, 1980, Carrier attempted to comply with new regulations by the use of self-contained units consisting of a light and an electric power supply, which was clamped onto the rear ladder of the caboose. These proved unsatisfactory for various reasons, and Carrier changed to a flasher light which was separated from the power supply. The flasher light was permanently affixed to the rear of the caboose; wires for the power supply were run through the outside wall of the caboose and connected inside to a battery pack, which was mounted in a rack on the inside of the caboose. This battery pack, which weighed about 35 pounds, required recharging between trips, which could be done by plugging it into an ordinary household electric outlet.

Carrier had obtained a waiver of the FRA regulation until December 1, 1980. In November, 1980, having installed the battery packs described above, Carrier issued General Orders on each division containing instructions as to the use of the new markers. These General Orders required conductors to obtain a battery pack at the yard office at the beginning of a trip and to place it in the rack in the caboose, and to remove it from the rack at the end of a trip and take it to the yard office there. (During 1981, Carrier electrified all of its cabooses by installing axle-driven generators; by December 18, 1981, battery packs were no longer in use).

It is the contention of the Organization that the requirement that conductors transport the battery packs between the yard office and the caboose at the beginning and end of their trips is in violation of schedule rules, because these services are outside the scope of the conductor's duties. The Organization relies primarily on the history and practice described above and on Rule 62. "Placing Supplies In Caboose." That rule reads:

"At division terminals where supplies are furnished, employes other than trainmen will place in cabooses, chains, frogs, cables, jacks, knuckles, pins, packing, oil and brasses. Trainmen will not be relieved from knowing that caboose is properly equipped." (The rule covering conductors is essentially the same.)

We cannot agree that Rule 62 applies to the battery packs involved in this case. The battery packs are an integral part of the marker lights. The technical and mechanical development of

caboose marker lights through the stages of kerosene lamps to reflectors to electrified lights does not constitute any change in the function of the markers or in the nature of the responsibility placed upon the conductors. The battery packs are not "supplies" any more than the kerosene lamps were; both are limited to and are a necessary part of providing the illumination of the rear of the train considered necessary for safe operation under changing times, conditions and regulations. While the requirement that conductors carry the battery packs to and from the yard office has undoubtedly added to their burdens, it has not changed the nature of their work or added to the "scope" of their duties. They had certain duties with respect to the kerosene lamps, lesser duties with respect to the reflectors and more burdensome duties with respect to the battery packs; but these changes resulted from differences in the nature of the equipment used, not in the function performed by the conductors. It may be that the carrying of the battery packs increased the work of conductors to such an extent that they feel they are entitled to additional compensation for performing it, but that is a matter for negotiation under Section 6 of the Railway Labor Act, not a basis for claims of a rule violation. In our view, the requirement that conductors carry the battery packs from the yard office to the caboose at the initial terminal and from the caboose to the yard office at the final terminal has not been shown to be a rule violation and claims based upon that requirement cannot be sustained.

In some of the claims before us, however, Carrier went beyond the general requirement discussed above. On the Ore Division, for the period November 14, 1980 through November 25, 1980, Trainmaster's Bulletin No. 34 provided that "(t)he conductors on 936-937 when arriving at North Green Bay are to take the battery packs with them to the motel where they will be responsible for plugging them in and for recharging." Under that bulletin, conductors were not required simply to take the battery packs to and from the yard office, where they went on and off duty, but were required to take them with them during their off-duty hours and to be responsible for recharging them during those off-duty hours. In such cases, we think the claims are justified under the "Beginning And Ending Of Day" Rule; Claimants performed service after they were relieved from duty and are therefore entitled to an additional day's pay. Since we cannot determine from the record before us which Claimants on which dates were required to perform such off-duty service, we leave it to the parties to make such determination and to apply the award accordingly.

Award: Claims disposed of in accordance with Findings.

*G. R. Maloney*  
G. R. Maloney, Employee Member

*R. W. Schmieg*  
R. W. Schmieg, Carrier Member

*H. Raymond Cluster*  
H. Raymond Cluster  
Neutral Member and Chairman

CHICAGO, ILLINOIS  
May 20, 1982