

SPECIAL BOARD OF ADJUSTMENT NO. 175

AWARD NO. 337

UNITED TRANSPORTATION UNION (WESTERN REGION)

VS.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY (LINES WEST)

STATEMENT OF CLAIM: Claims of Conductor C. J. Roane & crew for miles lost on February 5, 11, 19 & 25, 1976 account shippers moving cars.

FINDINGS: After empties were spotted at the grain elevator spur at Fairfield, the customer loaded the cars and then moved some of them out so that they fouled the main line of Carrier.

The controlling agreement is found in Appendix 26, the June 16, 1959 Agreement, and reads in pertinent part as follows:

"It is agreed that patrons loading or unloading cars on other than industry-owned or leased tracks or intra-plant tracks may, (after same have been initially placed by train crews) with or without assistance of carrier employees move cars as necessary in the process of loading or unloading, *except* they may not move cars onto a main track or make reverse movements over a switch from one track to another."

Clearly, the rule was violated. Moreover, in 1967 a number of similar claims accumulated and were withdrawn only after Carrier assured the Organization that they would no longer permit patrons to violate the rule. Carrier's present plea that it has no control over the patron is accordingly insufficient to support a denial of this claim.

However, we will deny any claim for deadheading not performed.

AWARD: Claim sustained to the extent indicated. Carrier shall make this

award effective within 30 days of the date hereof.


DAVID H. BROWN, Chairman and Neutral
Member


J. R. WERNER, Carrier Member


F. D. TUFFLEY, Organization Member

disent on deadhead issue

January 15, 1979