

PUBLIC LAW BOARD NO. 2379

AWARD NO. 13

UNITED TRANSPORTATION UNION (S)

VS.

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim one day's pay, in addition to all other allowances, for June 26, 1977, in favor of Switch Foreman R. R. Campbell, helpers E. Esparza and J. R. Esteban account instructed and required to perform two classes of service.

FINDINGS: On the claim date, Claimants were working their regular assignment, the 3:59 P.M. yard assignment at Roper. At about 4:45 P.M. Claimants were instructed to move the Sperry Rail Car No. 144 from the Corn Oil Spur to Roundhouse track No. 3 at 21st south. The move was made with the crew of SRS 144 operating their car and Claimants handling switches for the move. The engineer on the 3:59 P.M. yard assignment remained on his engine, and the diversion consumed the period from 4:45 to 5:05.

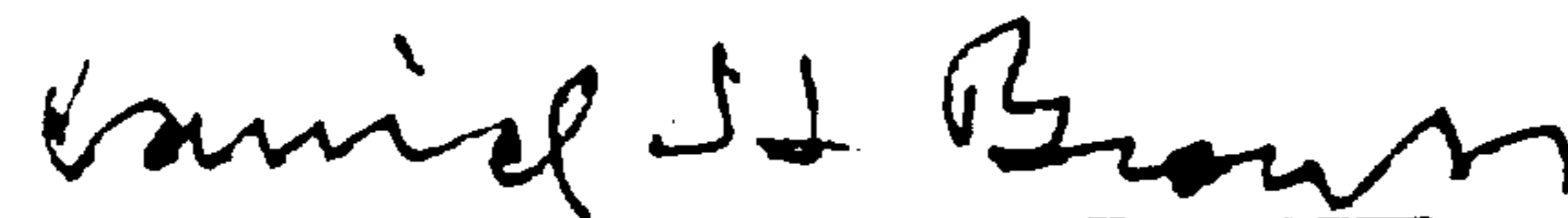
The controlling agreement provision is Article 28(c), which reads:

(c) Where self-propelled machines are operated on so-called live tracks, they will be considered as independent assignments and manned by a yard pilot at switch foreman's rate of pay. Where such machines are required to move cars, they will not be used in yard switching service and will be restricted to the handling of the cars in connection with the work they are doing and will not handle more than five cars at one time.


In Award 43 of Public Law Board No. 103 (Preston J. Moore, Referee) and in Award 26 of Public Law Board No. 1590 (Robert M. O'Brien, Referee), both on this property, the claim of a single switchman for a day's pay when used under like circumstances was sustained. On principle, the use

of the entire crew instead of a single member is indistinguishable. In handling the disputed work Claimants may be viewed as three pilots or three herders, but in either case they were used off their assignment. Carrier's reliance on Article 20 is unavailing.

AWARD: Claim sustained for a day's pay for each of the claimants. Carrier shall make this award effective within 30 days from date.

  
DAVID H. BROWN, Neutral Member

  
J. W. LOVEYTT, Carrier Member

  
W. T. PEARL, Organization Member

August 20, 1980