

PUBLIC LAW BOARD NO. 2364

PARTIES TO DISPUTE: United Transportation Union (C, T & Y)

vs.

The Atchison, Topeka and Santa Fe Railway
Company, Northern & Southern Divisions -
Western Lines

STATEMENT OF CLAIM:

Claim 8 hours at the respective yard rate of pay in addition to other time earned on September 12, 1975 for extra board crew Engine Foreman R. E. Marusak and Helpers R. L. Bassham and P. R. Porter, account mechanical department employees performing work normally performed by yard crews.

PROCEDURAL STATEMENT:

When this claim first came on to be argued before the Board the Carrier suggested a third party interest might be involved. The Claimants vigorously dissented. After argument, the Board ruled that a third party interest might be involved, depending upon the development of all of the details of the facts, and directed a notice be given of the pendency of this action to Brotherhood Railway Carmen of the United States and Canada, and that a postponement be entered to allow such third party Organization time to appear if desired, all of which was accordingly done.

Thereafter a Third Party Submission was filed by the Carmen Organization, which also appeared at the final hearing of this case through Peter S. Brooker, General Chairman of Carmen, Santa Fe System.

STATEMENT OF FACTS:

The work involved in this claim was performed in Saginaw Yard and yard crews were available. The work was performed by mechanical department employees using Santa Fe winch truck. The car being rerailed was a caboose. At some point in time, it was moved approximately 35 feet by application of the winch truck operated by the mechanical department employees. From that point it was moved to a proper destination by yard crews using a yard switch engine for that purpose.

DISCUSSION:

The Brotherhood Railroad Carmen has filed a lucid and logical brief asserting their contractual as well as historical right to support its contention the work performed in wrecking and rerailling of cars properly belongs to the carmen's craft. They also contend that if the operating crew Claimants are given the work as contended for in their claim, it would be a grave error and encroachment on the work of the carmen's craft.

It appears to the Board that Claimant Organization is taking the position, first, that the work performed in this case was wrecking service and that as such was properly yardmen's work. To this end they cite sections of Article 2(a), 7 and 32(a) of the Agreement, reading:

"The seniority dates of all yardmen established prior to April 30, 1960, in their respective yards shall be retained.

"Article 7(a)-Eight hours or less shall constitute a day's work.

"Article 7(b)-Yardmen called for any trick shall be paid for eight hours, whether work is furnished for the entire time or not, except in cases of insubordination or illness, when they shall be paid only for the time worked.

"Article 32(a)-Yardmen will protect work trains operating exclusively within switching limits. When only a few cars of material are to be unloaded in switching limits, yard crews will be used instead of through freight or local crews to perform work. This will not apply, however, to instances where bona fide road work trains are used to perform work train service both inside and outside of switching limits."

In a case arising on Gulf, Colorado and Santa Fe Railway Company, resulting in Award No. 22 of Special Board of Adjustment No. 296, (William H. Coburn, Chairman) the Board stated:

"The sole issue here is whether the described work belongs exclusively to yard crews under the prevailing practice and rules on this property."

The facts in Award No. 22 were that on claim dates a yard crew delivered certain stock cars to stock pens at Brownwood to be loaded. After spotting the head car, the yard crew returned to the train yard. Thereafter, a livestock loader performed the following work in connection with the loading and moving of the cars on a single track; Pulling pins between cars, setting hand brakes, and moving cars by means of a pinch bar and a pickup truck.

The Board sustained the claim in Award 22 that no evidence existed in the record showing that the parties had reached any kind of understanding on this property which would permit employees other than yardmen to perform the service rendered in this case within the switching limits of a yard, where such work has formerly been performed by yardmen.

The Board considers Award No. 22 to be a sound award which might have an impact upon the case now at issue except that the facts upon which it is based are different in the present case. The Carrier points to Award No. 5, of Public Law Board No. 1773, (Preston J. Moore, Chairman), as follows:

"In this dispute claimant herder foreman was instructed by the 33rd Street yardmaster to assist a hostler in rerailling Unit 1854 which had been derailed near Short 25 Track by the yard crew of the 4:00 p.m. Blue Tramp Assignment. The claimant herder foreman assisted in the rerailling of the unit by passing signals from the ground to the hostler who was rerailling the unit. The Organization contends that a yard crew should have been called to perform the service.

"This has been the subject matter of many a awards. In the absence of a provision in the Agreement which exclusively reserves such work function to a yard crew, this service may be performed by many other crafts. This service has historically been performed by mechanical department forces, maintenance of way forces, car department forces and who have you.

"The Board finds nothing in the Agreement which would prohibit a hostler and the claimant herein from rerailling the engine. Rule 6(b) states that a herder will accompany locomotives moving without cars outside roundhouse areas in charge of a hostler. Certainly in so doing, a herder may pass signals."

The Board is of the opinion that the claim could not be supported upon the sole ground that the rerailling of the car in itself is work train or wreck service belonging wholly or totally to yard crews.

There is another point in this case, however, that is more compelling.

While the work or wreck service performed in this case cannot under the record be held in fact to belong exclusively to yard crews, the movement of cars for the purpose of placement and operations is a function that is the proper and exclusive work of yardmen. That is recognized by Carrier in that an available yard crew was utilized to move the rerailed caboose back into Carrier's yard. The facts upon which to determine exactly the point at which rerailling ceased and switching began are a little fuzzy but the Board is of the opinion that breaking point can be determined by careful examination of the facts, as given by the parties; and that it is therefore unnecessary to dismiss the claim for disputed facts that cannot be resolved upon the record.

The Carrier states:

"That way car was rerailed by Mechanical Department employees who, utilizing an of track vehicle, moved way car 1708 approximately 30 to 35 feet within the confines of the derailment site in order to provide trackmen clear access to the damaged track so that necessary repairs could be made."

Furthermore, on page 4 of Carrier's Submission, it is stated:

"The derailment of Way Car 1708 was caused by excessive build up of dirt alongside the rails in Track 5404, Burris Mills, Saginaw Yard. Subsequent to the rerailling of the way car, Mechanical Department employes, using a wheel truck, moved the way car approximately 30 to 35 feet, thereby exposing the area immediately underneath the rerailed waycar. Such exposure of that area was necessary to allow Maintenance of Way employes to use necessary tools with which to remove the excessive dirt build up from the immediate area, which would allow cars or engines traversing the derailment site to do so without danger of derailment recurring."

In letter of J. R. Fitzgerald to Mr. C. P. Sawyer, General Chairman, UTU, he states:

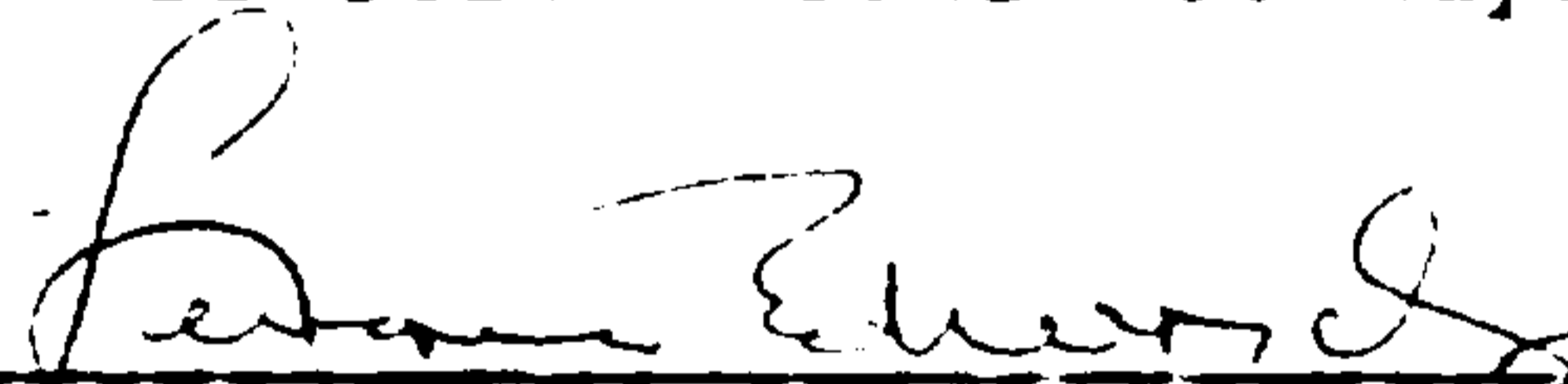
"My investigation reveals that the Mechanical Department wheel truck was utilized in rerailling caboose AT-1708 on Track 5404 in Burrus Mills at Saginaw on the date involved in this dispute. That caboose was subsequently moved from the site of the derailment by an on-duty yard engine crew."

The work involved was the rerailling of the caboose. The Board does not find sufficient precedent, practice or rule to support a finding that rerailling of the caboose was the exclusive work of Claimants.

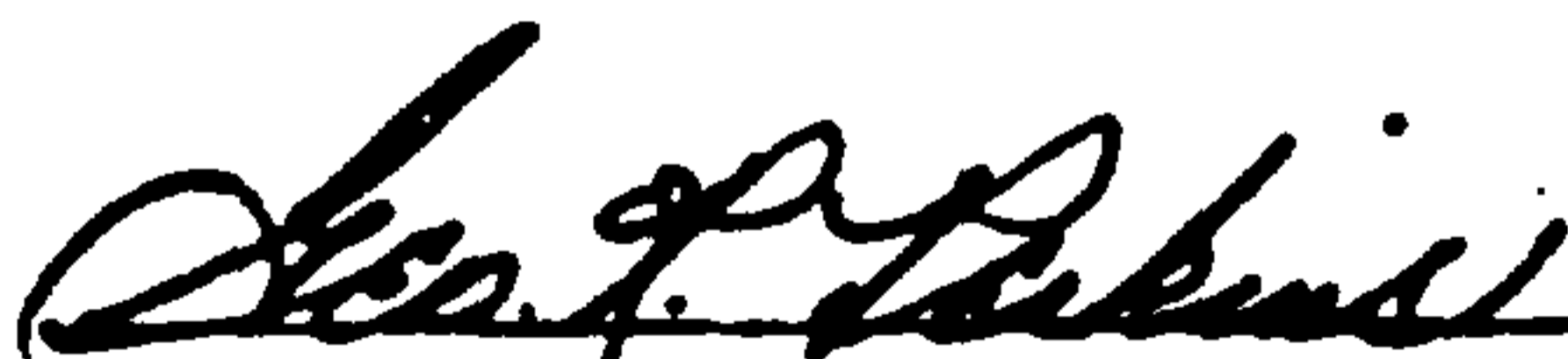
The Board does find that the moving of the caboose was not an integral work of rerailling the caboose. It was not necessary in this case to move the caboose in order to accomplish the reraill. This is sufficiently shown by the fact the caboose was not moved until the reraill work had been completed. Then it was moved so the mechanical forces could do some work on the rail and/or roadbed. The yard engine which was available to move the caboose from the site should have coupled in after the caboose was put back on the rails. Based upon such finding and conclusion alone, the claim has merit.

AWARD:

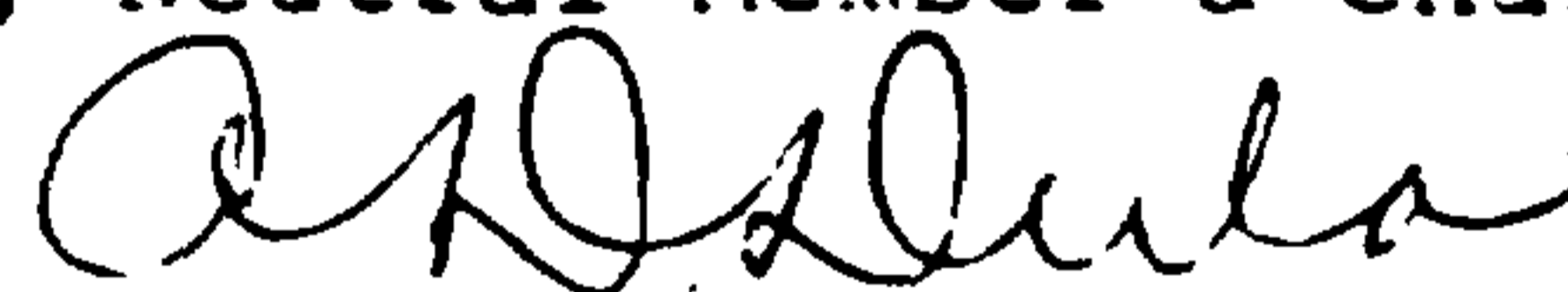
Claim sustained in accordance with the foregoing. Carrier is directed to make this award effective within 30 days.



Leverett Edwards, Neutral Member & Chairman



George R. Perkins
Organization Member



A. D. Dula
Carrier Member

Houston, Texas.

Dated: April 21, 1981