

PUBLIC LAW BOARD NO. 2739

AWARD NO. 7

UNITED TRANSPORTATION UNION

VS.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: T/C Foreman R. L. Stanley and crew for time and one-half account 3:59PM job annulled for holiday and 3:30PM job allowed to work January 1, 1979.

STATEMENT OF FACTS: Crew Foreman R. L. Stanley and three helpers were regularly assigned to a switch crew on the 3:59PM South Lead Yard Assignment, at the Ney Yard, Fort Worth, Texas. On January 1, 1979, a contractually recognized holiday, the carrier annulled the South Lead Yard Assignment and re-assigned the work to the crew holding the 3:30PM "Bum" Yard Assignment. Such "Bum" yard crew was composed of a foreman and two helpers.

Claimant's assignment routinely involves yard switching, industrial switching and transfer work as necessary. The 3:30PM Bum Yard Assignment is essentially a utility function, which performs all types of yard work, including transfers to connecting lines, lead switching and industrial switching.

Pursuant to the provisions of the agreement, claimant's crew was allowed holiday pay for January 1, 1979. However, on January 2,

1979, they submitted a time claim for one additional day's pay, at time and one-half rates, based on their not being allowed to work their regular assignment on the holiday. They also instituted claims for tie-up time at 1:45AM and coupling air pay.

On January 19, 1979, the carrier declined the claims on the basis of no contractual justification. On February 27, 1979, General Chairman J. D. McBride appealed the general manager's decision. Such appeal was subsequently denied and properly appealed to us for resolution.

RELEVANT CONTRACT PROVISIONS:

JUNE 25, 1964 NATIONAL AGREEMENT, ARTICLE I, SECTION 2:

The following provisions shall apply to regularly assigned engineers, firemen, hostlers and hostler helpers represented by an organization party hereto in yard service, and regularly assigned road service employees paid on a daily basis:

(a) Each regularly assigned engineer, fireman, hostler and hostler helper represented by an organization party hereto in yard service, and each regularly assigned road service employee in local freight service, including road switchers, roustabout runs, mine runs, or other miscellaneous service employees, who are confined to runs of 100 miles or less and who are therefore paid on a daily basis without a mileage component, and who meet the qualifications set forth in paragraph (c) hereof, shall receive one basic day's pay at the rate for the class and craft of service in which last engaged for each of the following enumerated holidays when such holidays fall on the assigned work day of the work week of the individual employee:

New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas Day

Only one basic day's pay shall be paid for the holidays irrespective of the number of shifts or trips worked.

NOTE: When any of the above-listed holidays fall on Sunday, the day observed by the State or Nation shall be considered the holiday.

(b) Any of the employees described in paragraph (a) hereof who works on any of the holidays listed in paragraph (a) hereof shall be paid at the rate of time and one-half for all services performed on the holiday with a minimum of one and one-half times the rate for the basis day.

* * * *

(e) That part of all rules, agreements, practices or understanding which require that crew assignments or individual assignments in the classes of service referred to in paragraph (a) hereof be worked a stipulated number of days per week or month will not apply to the seven holidays herein referred to; but where such an assignment is not worked on a holiday, the holiday payment to qualify employees provided by this rule will apply.

(f) As used in this rule, the terms "workday" and "holiday" refer to the day to which service payments are credited.

FINDINGS: The resolution of the underlying issue, represented by the facts in this claim, necessarily turns on the question of exclusivity of work between the two yard assignments. The union asserts that the 1964 National Agreement, which admittedly reserves to the carrier the right to annul an assignment on a designated holiday, does not authorize the carrier to transfer duties between established yard assignments in order to accommodate the work created by such holiday annulment.

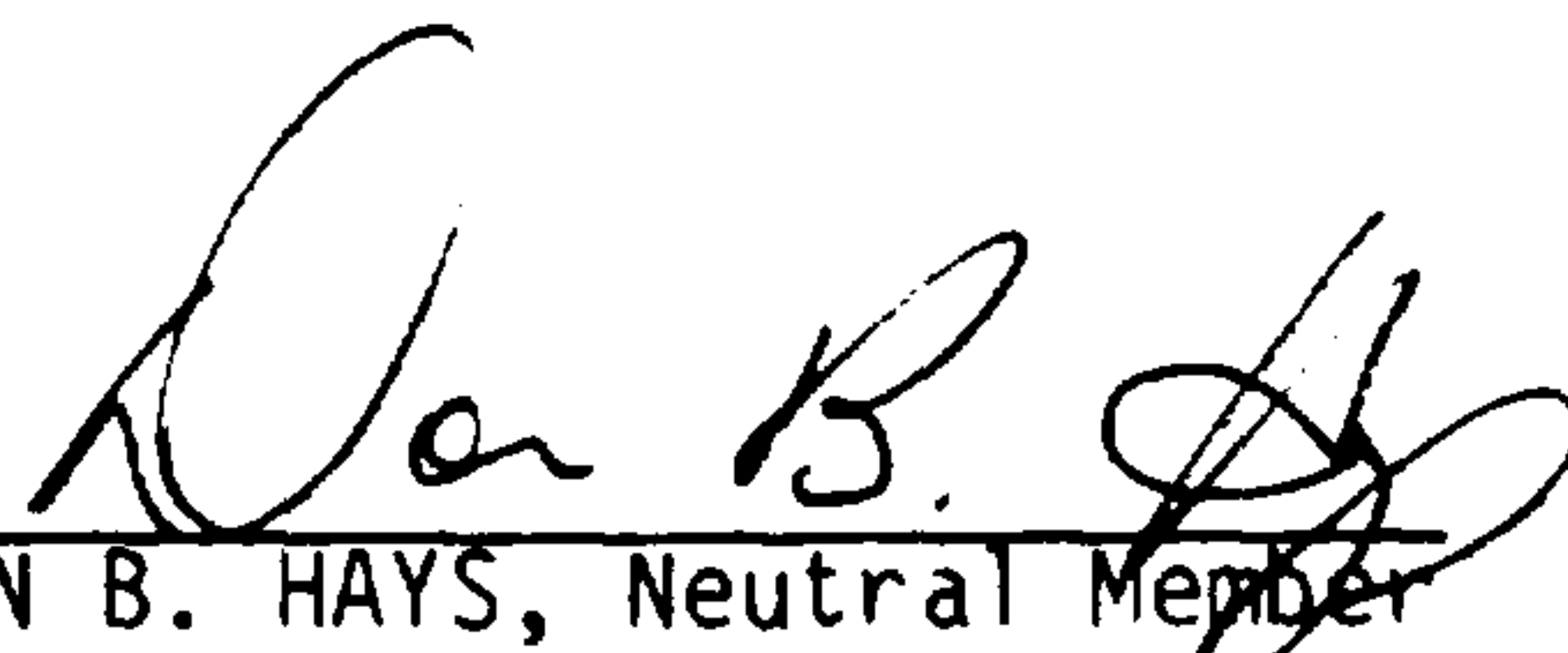
The carrier denies any such constraints on its authority to transfer work between yard assignments. It states that Article I, Section 2 of the 1964 Agreement, cited by the union, applies only to employees regularly assigned to road service in the classification of engineer, firemen, hostlers and hostler helpers, together with yard service engineers, hostlers and hostler helpers. Further, it argues

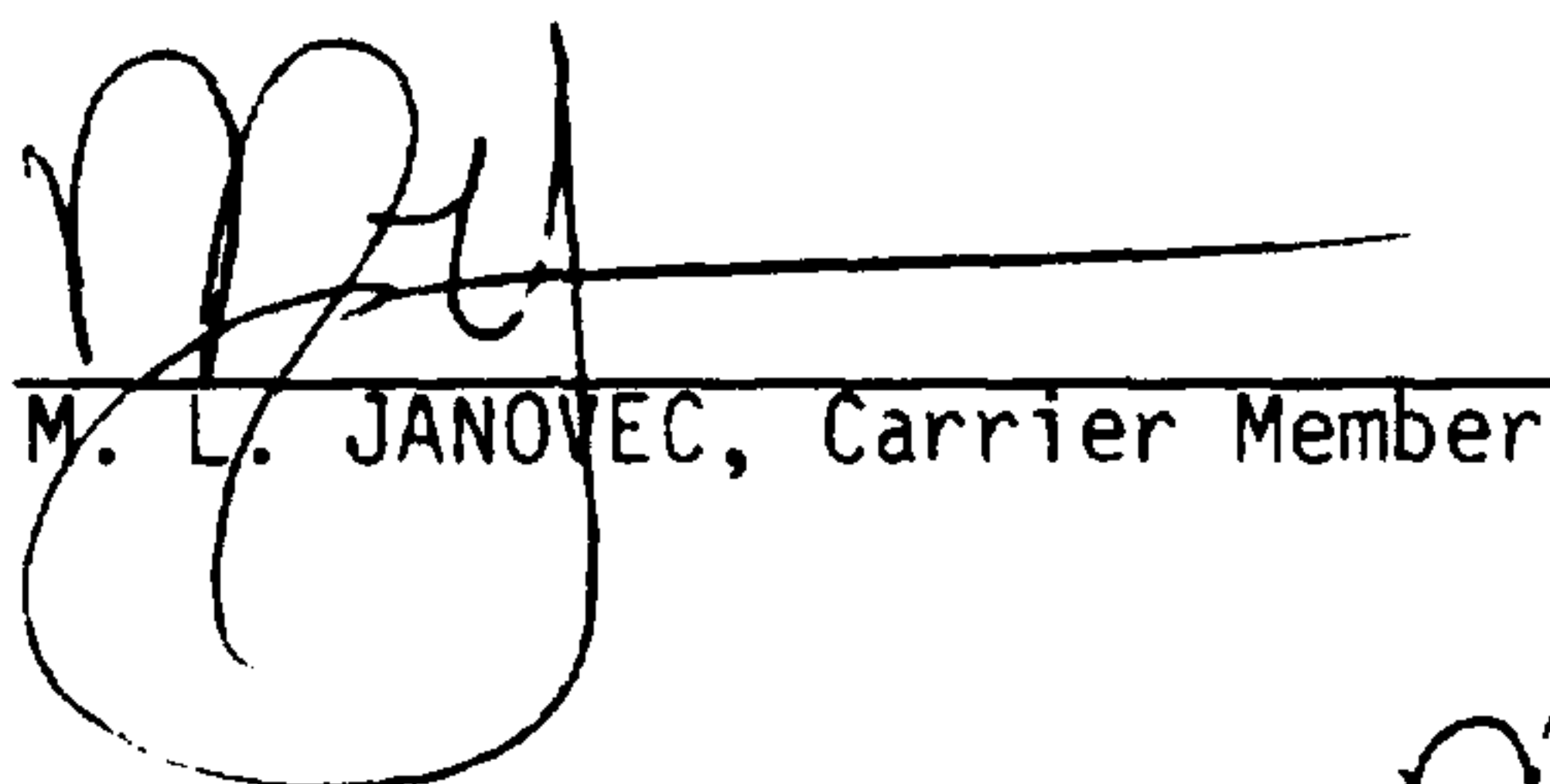
that under Article IV, Section 2, Paragraph (f) and (g), of the April 5, 1975 Mediation Agreement, the only contractual restrictions regarding the right to transfer work between assignments, in conjunction with a holiday annulment, is to ensure that any yard employee, who is affected by such annulment, receives the basic holiday pay if otherwise qualified.

The record before this board does not reveal any substantive difference in the yard work performed by the two designated assignments. In the absence of additional proof of an ancillary agreement, or an established policy, we must conclude that the different titles and starting times of the two yard assignments were not done for the purpose of designating a jurisdictional division of responsibilities; at most the "job titles" used by the parties represent only a means by which the particular assignment could be identified for bidding purposes and other relevant purposes.

Based on the record we find no contractual basis to support the union's allegations that the claimants lost work, to which they were otherwise entitled, as a direct result of the carrier's decision to annul a yard assignment in conjunction with the holiday.

AWARD: Claims denied.


DON B. HAYS, Neutral Member


M. L. JANOVEC, Carrier Member


J. D. MCBRIDE, Organization Member J.D.M.B

MAY 22, 1987
DATE