



In a letter dated April 22, 1983, the Organization submitted the instant claim to the Carrier. The Carrier denied the claim at every level of appeal.

It is the Organization's contention that the Claimant is entitled to the 100 miles claimed under the basic day rule, since he was directed by the Carrier to perform road work when he was regularly assigned to a Waterville yard switcher. The Organization adamantly maintains its position that the brake test performed by Claimant on the "Wood Job" is historically a road engineer's work. At times, the Organization concedes, yard engineers test the brakes on cars separately, prior to making up the entire train. However, yard engineers have never performed the full, terminal brake test required in the instant case, the Organization insists. Accordingly, a sustaining award is requested by the Organization.

The Carrier counters with reference to Article 9, Section 3 of the Agreement which states, in part, as follows:

"Yard switching assignments as required to meet the needs of the service will be maintained at Portland Terminal, Waterville, Bangor and will perform all work in those territories."

Since nothing in that clause limits the Carrier in its assignment of engineers at the specified locations, it is the Carrier's position that the assignment in question was permitted under the Agreement. Further, the Carrier maintains that none of the contractual provisions cited by the Organization contains the restrictions alleged in this claim. Moreover, yard engineers have, for many years, completed the yarding of trains for crews due to expire under the hours of service law, the Carrier asserts.


This Board agrees with the Carrier's assessment that Article 9, Section 3 contains no restriction on the work which may be performed by yard engineers. However, Section 3 addresses yard switching assignments in general terms. There is no specific language in that provision dealing with yard switching assignments or the work in dispute herein. However, both the Carrier and Organization have presented evidence of prior practices which, they contend, give meaning to Article 9. The Carrier analogizes the instant case to other types of assignments, such as the changing of motive power or the yarding of trains abandoned due to hours of service law. However, the instant dispute involved the assignment of a yard engineer to perform a brake test on a local freight train; an assignment which the Organization insists has always been restricted on this property. The Organization concedes that yard engineers have, in the past, tested brakes on cars separately, prior to putting the train together. Nonetheless, the Organization insists, the full terminal test performed in this instance is historically a road engineer's work. The Organization's past practice assertion remains uncontroverted by the Carrier.

It is the considered opinion of this Board that the long-standing and mutually accepted practice of the parties gives meaning to the general provisions of the contract. Clearly, the interpretation historically afforded Article 9 by the parties cannot be unilaterally modified by the Carrier. Accordingly, the brake test performed by the Claimant in this instance contravened the contractual understandings of the parties. As a result, the

instant claim shall be allowed by this Board.

AWARD: Claim sustained.

Carrier is directed to make the award effective within thirty (30) days from the date hereof.

  
Theodore H. O'Brien, Chairman and Neutral  
Member

  
E. F. Lyden, Employee Member

  
B. L. Peters, Carrier Member

Dated: 4/6/87