

PUBLIC LAW BOARD NO. 2500

Case No.: 35  
Award No.: 32

PARTIES TO DISPUTE:

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\* MAINE CENTRAL RAILROAD COMPANY  
\*  
\* AND  
\*  
\* UNITED TRANSPORTATION UNION (E)  
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STATEMENT OF CLAIM:

Claim for 100 miles account required to drain cylinder test valves and start the three locomotives (in) his consist before departing from the engine house ready track at Rigby.

Engineer J. V. Allen, dated September 8, 1984.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On September 8, 1984, the Claimant was assigned as engineer on Train MEBA scheduled to operate from Rigby Yard in South Portland to Bangor, ME. Prior to coupling his power consist to his train, the Carrier required the Claimant to start the three locomotives in his consist. In order to start the locomotives, it was necessary for the Claimant to drain the cylinder test valves. Alleging that such work has always been performed at this location by machinists and electricians, the Organization

submitted the instant claim, on behalf of the Claimant, for 100 miles in addition to his regular compensation. However, the Carrier denied the claim. The Carrier countered that nothing in the Engineers' Agreement prohibited the performance of such duties by an engineer.

Article 34, Section 1 of the Engineers' Agreement states, in pertinent part, as follows:

"Where hostlers are or may be employed, engineers will receive and deliver their engines at a point on a track designated for that purpose...

At Rigby, all engines will be set out on the ready track for engine crews to take at that point....

Engine crews will be given location in house of engine assigned, and will not be required to hunt for engine, or to leave engine in search for turntable man."

It is the Organization's position that the instant claim is supported by the established past practice of sixty years. At Rigby Yard, the Organization submits, the work in dispute has always been assigned to other craft employees. There is nothing in the Agreement, the Organization asserts, which allows the Carrier to assign engineers to perform the work of another craft when such positions are abolished.

The Carrier concedes that machinists or electricians had, historically, been required to start engines at Rigby Yard until the first trick (7:00 AM to 3:00 PM) assignments were discontinued. The Engineers' Agreement merely requires that the power be "set out on the ready track", the Carrier asserts, not that it be prepared and ready to go. Thus, there was no violation of the Agreement, the Carrier argues.

Further, the Carrier contends that the Organization's past practice argument is without merit. It is the Carrier's position that machinists and/or electricians have done this work in the past simply because they were employed and on duty. Thus, as at other points on Carrier's property where machinists and/or electricians' positions were discontinued, this function becomes engineers' work.

It is the opinion of this Board that the parties are bound by the established practice in which both parties participated for many years. The practice of assigning machinists and/or electricians to perform the work in question is binding upon the parties regardless of the Carrier's decision to discontinue certain assignments at Rigby Yard.

The Carrier correctly asserts that the applicable provisions of the Agreement merely require that the engines be set out for engine crews on the ready track at Rigby. However, the mutually accepted and consistent practices which have developed at Rigby Yard govern in matters not included in the written Agreement.


The Carrier suggests that the practice is limited to locations where machinists and/or electricians are on duty. The Carrier analogizes the instant case to other points on its property where machinists and electricians positions have been discontinued and engineers assume responsibility for starting their own engines. However, the uncontroverted evidence reveals that specific agreements have been negotiated between the Carrier and the engineers who are required to start their engines at outlying locations on the Carrier's property. In certain circumstances, the parties have negotiated an arbitrary payment for engineers at these locations.


Clearly, the existence of such agreements conflicts with the Carrier's averment that Rigby Yard engineers automatically assumed additional duties when the electricians' and machinists' positions were discontinued. Without negotiating a new agreement with the Organization, the Carrier is bound by the established practices at Rigby. There is no evidence in the record that the Carrier attempted to reach such an accommodation with Rigby Yard engineers.


In accordance with the foregoing, this Board finds the probative evidence in this dispute to support the Organization's contentions. As a result, the instant claim must be sustained.

AWARD: Claim sustained.

The 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

  
R. E. Dinsmore, Carrier Member

Dated: *July 20, 1987*