

PARTIES ) UNITED TRANSPORTATION UNION - T  
 TO ) vs.  
 DISPUTE ) NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim for one day at yard conductor's rates, each date, for the first and second shift, in favor of the Williamson Yard conductors listed, account not called to perform yard conductor's service, which was performed by a non-seniority employee.

<u>Date &amp; Time of Claim</u>	<u>Conductor</u>
4/12/80 1st shift	E. E. Sesco
2nd shift	G. B. Artis

And additional dates claimed as indicated in above file.

#### OPINION OF THE BOARD

Construction on a highway bridge at the West end and inside of Williamson Yard limits was commenced on November 12, 1979. Carrier placed a maintenance of way supervisor to observe track conditions after blasting operations, route trucks and heavy construction equipment across the right-of-way for the purpose of determining whether or not the track was unsafe for passage of trains and if unsafe, to stop approaching trains. On November 9, 1979 Carrier issued bulletin No. 36 which read as follows:

"Until further notice, account highway construction Monday through Saturday between the hours of 7:01 AM to 5:30 PM, all trains and engines approach Mile Post N-470:1 Williamson prepared to stop and proceed only on hand signal or radio instructions from flagman on ground."

On January 9, 1980, Carrier issued bulletin No. 47 which was as follows:

"Operations Bulletin No. 36, dated November 9, 1979 is annulled.

Bulletin No. 47:

Until further notice, account highway construction Monday through Saturday between the hours of 7:30 AM and 5:01 PM, all trains and engines approach Mile Post N-470:1, Williamson, prepared to stop and proceed only on hand signal or radio instructions from flagman on ground. Also, crew

members should use caution getting on or off and/or walking in this vicinity.

After a protest was registered by UTU Union - T, concerning the use of a supervisor to perform the flagging service at the highway bridge construction site in Williamson Yard, a yard conductor was called and used to perform the flagging for trains for a short while, but then Carrier reverted back to having the supervisor perform the flagging service. Carrier issued Bulletin No. 66, dated June 6, 1980, which is as follows:

"ALL CONCERNED:

Operations Bulletin No. 61 dated May 20, 1980 is cancelled. Effective immediately, account highway bridge construction near Mile Post 470.1, Williamson, all trains and engines approach this location at restricted speed, looking out for contractors' equipment working in this area.

Also, crew members should use caution getting on and off equipment and walking in this vicinity."

On June 11, 1980, UTU submitted time claims for two (2) shifts per day back for a period of sixty (60) days for the first out and qualified yard conductors on the extra list account of not called to perform flagging duties at the construction site. Two (2) claims for each six (6) days per week are being held for disposition based upon this award and this pilot claim. Carrier contends that there was no violation of the applicable agreement at any time since construction began on November 12, 1979.

It is the opinion of this Board that because of the instructions given by Carrier in Bulletins Nos. 36 and 47, all claims dated prior to June 6, 1980, should be sustained. After June 6, 1980, when Bulletin Nos. 47 and 61 were cancelled, and Bulletin No. 66 went into effect, claims will be denied.

AWARD: Claims dated prior to June 6, 1980 sustained.  
Claims dated June 6, 1980 and after June 6, 1980, denied.

Signed at Roanoke, Virginia, this 9th day of September, 1981.



GENE T. RITTER,  
Chairman

*N. G. Jenkins, dissent*  
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N. G. JENKINS, *rep*  
Organization Member

*L. E. Trefell*  
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L. E. TREXELL  
Carrier Member