

PUBLIC LAW BOARD NO. 2983

IDE-5572

PARTIES) UNION PACIFIC RAILROAD COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Claim of Engineer D. B. Parker for each date of March 31, 1979 and April 7, 1979 for placing ice and drinking water on his engine while working a Kemmerer Road Switcher.

FINDINGS: This Public Law Board No. 2983 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant engineer was assigned to the Kemmerer Road Switcher and on March 31, 1979 was required to place ice and water on the units. The parties had entered into an agreement that granted a one hour arbitrary to an engineer who was directed by proper authority to perform that function.

The Carrier contends that Section 7 and Section 4 of the Road Switcher Agreement provides for a guarantee of 125 miles when earnings from all sources other than overtime do not produce an amount equal to 125 miles. In the instant case the Carrier urges that the one hour arbitrary for supplying ice and water herein was absorbed by the guarantee.

The Carrier's position would be absolutely correct in the absence of a practice of paying all engineers at Kemmerer in addition to the guarantee from the date road switchers were assigned at Kemmerer until March 13, 1979. The Carrier did not deny that there is an established practice of paying the engineers at Kemmerer one hour under such circumstances. The practice of the parties under a rule between the same parties establishes an interpretation of that agreement.

The agreement to pay<sup>!</sup> the one hour arbitrary for placing ice and drinking water on the engine was entered into pursuant to the road switcher agreement. If the Carrier could establish there has not been a practice of paying engineers under such circumstances, then the claim would be invalid.

The one hour arbitrary agreement was not in effect when the road switchers' agreement was made, and it may well have been the intent of the parties to deduct the one hour from the guarantee. However, in the absence of a practice on the property, such would not be this referee's interpretation of the agreement.

Based upon the allegations of the Union regarding past practice under the agreement, the claim will be sustained.

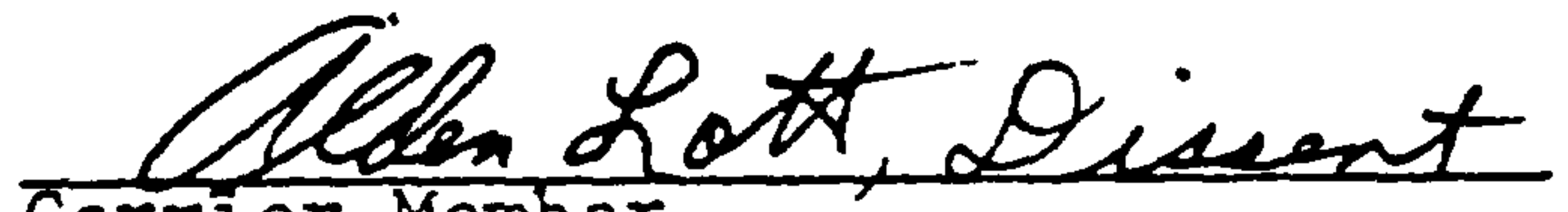
AWARD: Claim sustained.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

  
Preston J. Moore, Chairman

  
Organization Member

*Salt Lake, June 21, 1952*

  
Carrier Member