

PUBLIC LAW BOARD NO. 3634

Award No. 5, Case No. 24

ORGANIZATION'S FILE NO. UTU 190-1366-78

CARRIER'S FILE NO. TO 5818

PARTIES
TO
DISPUTE

UNITED TRANSPORTATION UNION - TRAINMEN
VS
UNION PACIFIC RAILROAD COMPANY

EMPLOYEE'S STATEMENT OF CLAIM

Claim of Foreman R.D. Mellen and Helpers E.F. Strellich and S.B. Garland for one day's pay account performing service belonging to D&RGW on February 7, 1984.

STATEMENT OF FACTS

The claimants are Engine Foreman and Yard Helpers who on February 7, 1984 in the Union Pacific North Yard at Salt Lake City were ordered to pick up coal empties and place them with an interchange cut of cars to be pulled back to the D&RGW Roper Yard by a D&RGW crew with one engine unit. When the D&RGW crew were unable to pull the cut of 89 cars over the grade necessary to get them out of the Union Pacific yard and back to the D&RGW yard, the Union Pacific crew was ordered to push the D&RGW train over the hill.

The Union Pacific crew thereupon filed a claim for one day's pay in compensation for doing the work of another carrier.

POSITION OF THE PARTIES

The Organization

1. It is a long standing understanding that employees of one company do not provide service for another without being compensated for such service.
2. The interchange between the Union Pacific and the D&RGW has been going on for decades with each doing half of the work but operating totally separate from each other.
3. It should have been obvious to the yardmaster that the D&RGW train could not pull all of those cars. The yardmaster, by directing the attachment of the additional cars, precipitated the situation.
4. The D&RGW crew could have taken the cars in successive separate pulls rather than all at once.

5. The single unit could not pull the 89 cars far enough out of the Union Pacific yard to block incoming trains. If it did, all it had to do was back up.
6. Public Law Board No. 1133, Award No. 50, supports the Organization's position.

The Carrier

1. The Union Pacific crew was not doing D&RGW work but merely clearing the Union Pacific tracks. The D&RGW train was blocking the entry of trains into the yard. It was also blocking public crossings and had to be moved. The crew of one Union Pacific train had only 15 minutes remaining under the Federal Hours of Service Law and had to have access.
2. Public Law Board awards support the Carrier's denial.

DISCUSSION

The Carrier relies on the support of several Public Law Board decisions, all of which lack essential elements of this case. In Public Law Board No. 48, Award No. 37, engine failure on the inbound lead by a D&RGW train blocked Union Pacific operations and four public street crossings. The Board concluded:

While it is conceded that on the properties mentioned here, under normal operating conditions the delivering crew is required to complete an interchange delivery, under the facts and circumstances shown to have been prevailing in this instance, we cannot find that a sustaining award is warranted.

Public Law Board No. 413, Award No. 10 and Public Law Board No. 887, Award No. 36 also involved engine failures on trains which were blocking operations.

In the present case, whether or not operations were being blocked is in dispute. The imminent expiration of federally allowed work time by a

road crew did add a mini-emergency. The Organization's argument that the yardmaster could have avoided the situation by not adding to the interchange cut more cars than the D&RGW unit could pull appears sound. Having created the situation, whether by inadvertence or carelessness, the question still remains whether the Union Pacific crew in pushing the D&RGW train was doing Union Pacific work or D&RGW work. Undoubtedly, with some lapse of time, the D&RGW crew could have either made two trips or called for another D&RGW power unit. It was more expeditious to simply push the D&RGW train over the hill.

In doing so, the Union Pacific crew never left the yard limits. They also suffered no loss of work or pay. Without the Union Pacific assistance, D&RGW employees would have been required to spend more time, either to take two trips or to call for and double up power unit and crews. They can be perceived to have lost work through the Union Pacific assistance.

Public Law Board No. 1133 in Award No. 50, cited by the Organization, apparently dealt with almost precisely the same circumstance as in the present case. That Board rejected comparison with Board No. 48, Award No. 37 because of the engine failure emergency and Public Law Board No. 723, Award No. 4 because the crew had assisted the foreign train voluntarily rather than being ordered by the Carrier to do so.

Thus Public Law Board No. 1133, Award No. 50 on the same property and apparently in closely similar circumstances provides the guiding precedent. However, the citations from that case do not inform us what the remedy was. One day's pay for each of the claimants for performing a task of no disadvantage to them and perfectly logical under the circumstances from the

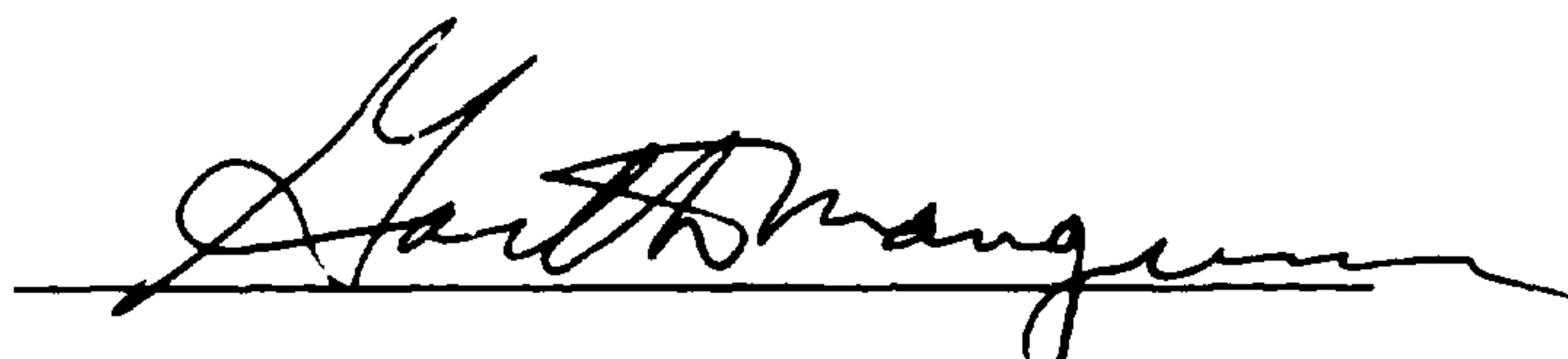
Carrier's vantagepoint, except for the existence of the contrary 1974 decision, appears to be more than can be justified by the facts of the case.

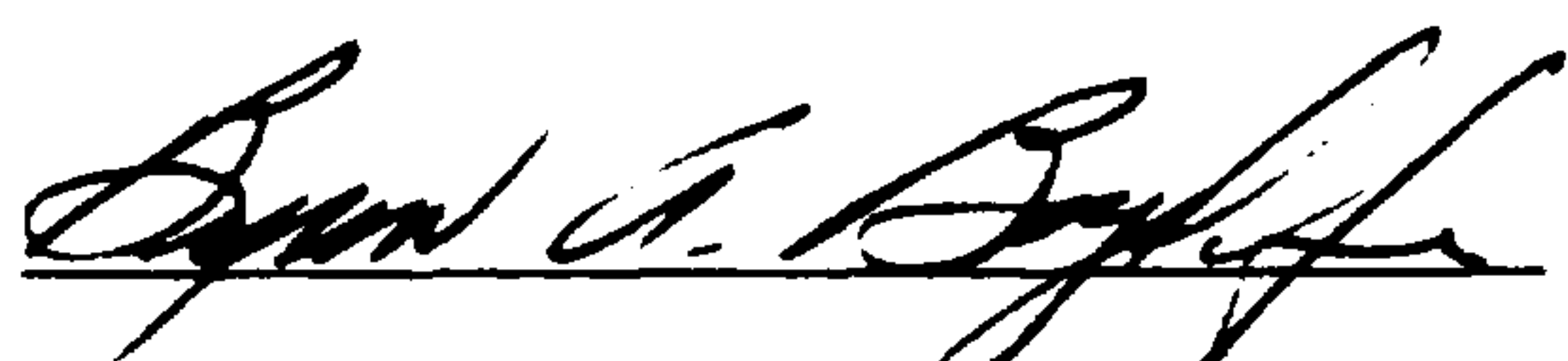
AWARD


The claim is sustained but the penalty modified to two hours pay for each claimant.

ORDER

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


Garth L. Mangum, Neutral-Chairman


Byron A. Boyd, Jr.
Employee Member


John E. Cook
Carrier Member

Salt Lake City, Utah

August 12, 1986