

PUBLIC LAW BOARD NO. 3926

THE DENVER AND RIO GRANDE RAILROAD COMPANY

AND

UNITED TRANSPORTATION COMPANY

STATEMENT OF CLAIM

Claim one day's pay at yard rates for January 1 and January 2, 1984, one day, each date, each claimant, in favor of D. L. Anderson, J. Maldonado, W. Williams, N. Dougherty, L. Chicaro, J. Forsha, R. Surratt, K. Decker and T. Evans account lost 2 days Holiday pay when arbitrarily moved from yard to road extra board in violation of Agreement. (Claim as stated by Employee).

STATEMENT OF FACTS

1. A conflict exists as to the place of General Chairman Smith, then Local Chairman, in this matter. This conflict as to Smith's place in the reduction of force is not substantive inasmuch as the authority of the Local Chairman is limited to maintaining the Extra Board so that the switchmen on the Board are making ten days per half month. (See Employees' Submission Article 27, Reduction of Force.)

2. The Yard Extra was cut by eight (8) upon instruction of a Carrier Official on December 31, 1983.

3. Claimant D. L. Anderson was paid holiday pay since he remained on the Yard Extra Board.

DISCUSSION

This Board has considered the entire record in this case including the position papers submitted to the Board at its convening on June 5, 1986 and the exhibits submitted by the Carrier and Employees relating to this matter.

Upon this record, the Chairman and Neutral Member of the Board finds as follows:

1. That this Public Law Board finds that the parties are Carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

2. That Article 27. Reduction of Force - (a) When switchmen on the extra board are not making ten days per half month, the board will be reduced, by request of Local Chairman, does not require agreement by the Local Chairman to reduce the extra board. It does clearly require the Carrier to reduce the extra board when requested by the Local Chairman where the men are not making ten (10) days per half month.

3. That the record submitted indicates that fifteen men were on the extra board as of December 30, 1986 and presumably were making at least ten (10) days per half month otherwise it would be reasonable to conclude that the Local Chairman would have taken some corrective action.

4. That the reduction in force which occurred was within the right of Carrier inasmuch as the only limitation upon such right is that contained in Article 27.

5. That whether the Carrier reduced the extra board deliberately to save holiday pay is speculative at best and therefore cannot be considered as limiting the Carrier vested right.

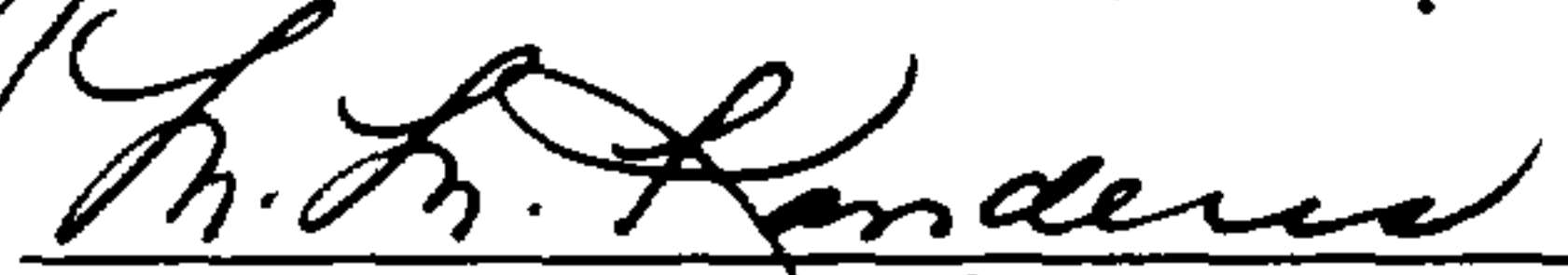
6. That the Chairman and Neutral Member cannot consider as fact the generalities attributable to a Carrier Official which the Employees submit as substance for the claims. (i. e. move the men to protect holidays and football, etc.). The only considerations for the Neutral is the agreement rules and the provable facts.

AWARD

In view of all of the foregoing, the claims are denied.



Jack W. Cassle, Chairman and Neutral Member



M. M. Kanderis, Carrier Member



W. T. Pearl, Employee Member

This award dated this 22nd day of October, 1986.

Public Law Board No. 3926

Award No. 6

Dissenting Opinion

Article 27(a) has been an integral part of the Agreement between the parties since 1943. From that time, to the present, any reduction of the extra board has been accomplished, only, when requested by the local chairman. In Award No. 6, of Public Law Board No. 3926, the majority is attempting to write a new Rule - Contrary to the correct application and interpretation by the parties.

The majority ignored the precedent established by on-the-property Public Law Board No. 103, Award No. 6. That Board, in interpreting Article 27(a), considered a case where a Switchman was removed from the extra board on July 4, 1966, without request from the local chairman. Award No. 6, in sustaining the claim, held:

" The Carrier acted unilaterally in removing Claimant from the extra board and preventing him from qualifying for holiday pay. Carrier has been unable to show that the local chairman acted in bad faith in refusing to reduce the board."

It should be noted that all members of Public Law Board No. 103 (including the Carrier) signed Award No. 6, agreeing to the proper interpretation, without dissent.

The only consideration of the Chairman and Neutral Member in the instant case should have been: the express language of the Agreement Articles, the provable fact that the claimants were deprived of the holiday pay when the Carrier unilaterally removed them from the Switchmen's extra board, and the precedential authority presented to the Board.

Clearly, Award No. 6 is erroneous and for reasons stated herein the Employees dissent.

W T Pearl

W. T. Pearl, Employee Member
Public Law Board No. 3926