

PUBLIC LAW BOARD NO. 1479

Parties to Dispute
UNited TRANSPORTATION UNION
and
BURLINGTON NORTHERN, INC.

STATEMENT OF CLAIM:

Claim for one yard day's pay from Eugene Yard Foreman M. E. Strayer and Helpers D. W. Eisile and T. J. Tjomsland, account not used to man Train #483 from Station 68520 into Eugene Yard on June 27, 1972.

DISCUSSION

On June 27, 1972, Train 483, going from Albany, Oregon to Eugene, Oregon had engine trouble at Fayetteville, Oregon. Mr. J. R. Pegg, the Albany Roundhouse Foreman, came to the scene and, upon discovering a broken water header hose, ordered the Engineer and Head Brakeman back to Albany to get a replacement engine. When the replacement engine arrived it was coupled to the train and the crew, accompanied by Pegg, continued its run. When the train arrived at Junction City, Oregon, its right of way was blocked by a garbage truck and the crew died under the Hours of Service law. It would appear that the train was blocking the main line and street crossings in Junction City. Furthermore, the engine was needed in Eugene as power for another

scheduled train. It would also appear that there were no road crews available. As a result, Pegg brought the train in from Junction City to Eugene. The on-duty yard crew at Eugene, consisting of Yard Foreman M. E. Strayer and helpers D. W. Eisele and T. J. Tjomsland, submitted a claim for a day's pay, alleging that they should have been used to bring the train from Junction City to Eugene.

The Organization's basic argument in support of the instant claim is that road service in road territory, when not performed by roadmen, must be performed by yardmen. Therefore, asserts the Organization, it was improper for the Carrier to have utilized a roundhouse foreman to take the train from Junction City to Eugene. The remedy for such a violation has historically been one day's pay, claims the Organization, citing a number of past awards in support thereof.

The Carrier cites Article VIII of the Open Yard Schedule, which is as follows:

ARTICLE VIII

Where regularly assigned to perform service within switching limits, yardmen shall not be used in road service when road crews are available, except in case of emergency. When yard crews are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service.

The Carrier contends that although Article VIII would have allowed it to use the claimants to take the train from Junction City to Eugene, under the emergency conditions that existed, it was not required to do so. The Carrier also argues that it was not established that the claimants would have been the

ones to make the move if a yard crew had been utilized. Finally, contends the Carrier, if the claimants had been utilized, under the terms of Article VIII, they would have been entitled only to actual time, miles or hours, whichever was greater, subject to the stipulated minimum of one hour, and thus the claim for a full day's pay is inappropriate.

FINDINGS

Based upon the record, this Board finds as follows:

1. The Carrier and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934.
2. This Board has jurisdiction over the dispute involved herein.
3. The parties to said dispute were given due notice of hearing thereon.
4. The Board is convinced that the claimants should have been utilized to move the train from Junction City to Eugene.

Even assuming an emergency existed, it was possible to use them for the move, and under such circumstances, a yard crew should have been used instead of a roundhouse foreman.

As for the remedy, this Board believes that the claimants should receive no more than they would have received had they been used to make the move. While the record is not clear as to the miles traversed or the hours consumed in the move by Roundhouse Foreman Pegg, there is a concession in the record by the Superintendent - namely, an offer of two hours to each

claimant - that indicates that the move would have been or was,
that long. Accordingly, the Award in this case is as follows:

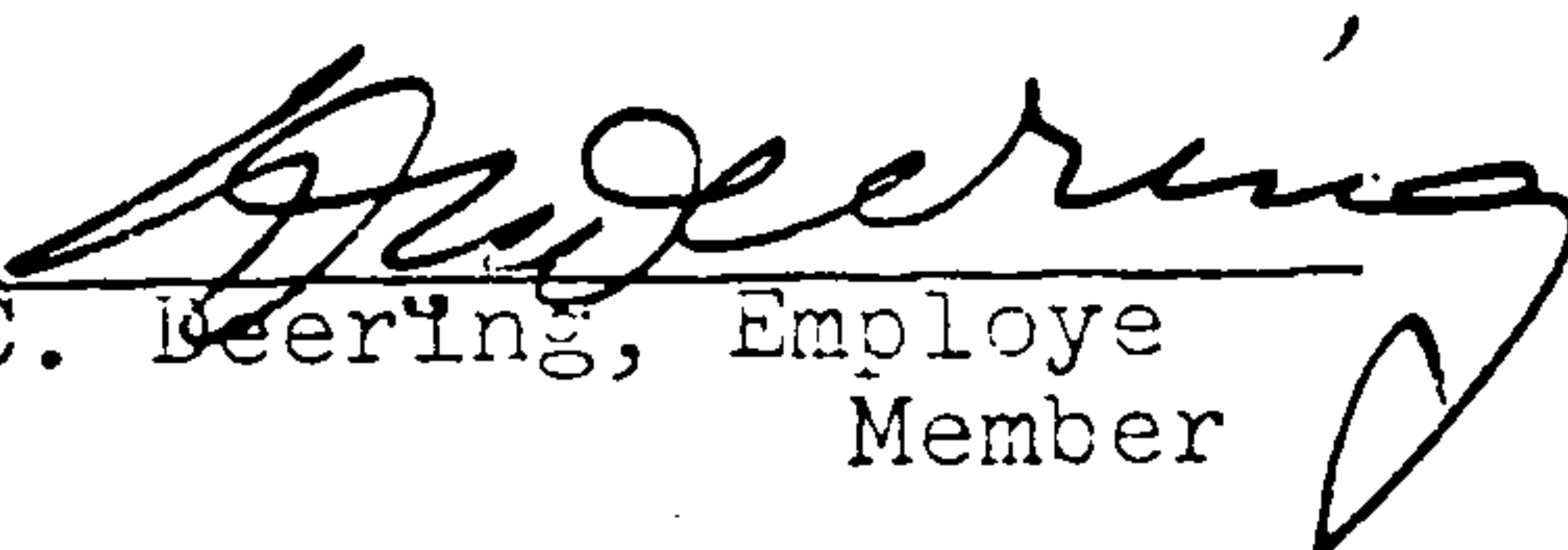
AWARD

Claim sustained for two hours to each claimant. Payment
by the Carrier of such claims shall be made within thirty (30)
days of the effective date, of this Award.

PUBLIC LAW BOARD NO. 1479


MORRIS L. MYERS, Neutral
Member


A. E. EGBERS, Carrier
Member


D. C. DEERING, Employee
Member

Dated: August 21, 1978