

CTA 83-4-7F.
CTA 83-3-31B.

PUBLIC LAW BOARD NO. 3731

Award No. 4
Cases 19 and 23

PARTIES
TO
DISPUTE

Burlington Northern Railroad Company
and
United Transportation Union

STATEMENT
OF CLAIM

Case No. 19

"Claim of Missoula Yard Foreman J. L. Howerton with Yard Helpers W. J. Ashe and D. R. Daniels for their time slip No. 1-30A dated January 30, 1983, claiming basic day at appropriate rate account closing car doors."

Case No. 23

"Claim on behalf of Missoula Conductor O. E. York, Brakemen J. R. Morrison and B. H. Krystkowiak as per their T/S No. 9-A dated January 9, 1983, claiming 100 miles (basic day) at applicable rate account closing doors while employed on Train 45864 at Missoula, Montana, date."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The claims herein are the pilot claims for a very large number of claims filed after October 8, 1982, involving each instance when a car door was closed by an employee represented by the Organization herein (at Missoula, Montana).

In Case No. 19 the crew involved was employed in yard service at Missoula on January 30, 1983. In the course of their duties on that day claimants were required to close an open plug door on a car which was being handled by them. In case No. 23 the crew was employed in East Freight Pool Service headquartered at Missoula. On January 9 claimants were ordered for a particular train and required to close car doors which were discovered to be open while they were involved in the performance of their terminal air brake testing procedures. The record does not reveal how many car doors were closed or how long it took on that day but

there were a large number of doors. In each instance, in both of the claims above, the crew submitted a time slip claiming an additional 100 miles or basic day for the closing of the car doors. Each claim was declined by the Carrier on the basis that they were not supported by any rule or agreement.

The Organization indicates that the requirement that the doors be closed is set forth in Carrier's Consolidated Code Rules 901 and 904(A). In support of the claim, the Organization cites the basic day rule for brakemen and the basic day rule for conductors. The Organization also notes that the current Carrier, the Burlington Northern Railroad Company, is the result of a merger of the former NP, GM, SPS&S and CB&Q railroads on March 3, 1970. Each of the former component railroads have retained their separate schedules for conductors, brakemen and yardmen. The Organization maintains that it has not been a duty of train crews to close car doors under former NP schedule rules since May 19, 1924. Prior to that date, according to the Organization, there was a dispute concerning the closing of car doors and on that date that dispute was resolved by Carrier's Vice President J. N. Rapelje who issued Operating Department Circular No. 3 which provides in pertinent part as follows:

"In order to decrease wind resistance and fire hazard, doors on empty closed cars, except stock cars, must be kept closed when such cars are in transit.

Closing car doors on freight equipment means pulling door shut and dropping fastener in place so that door will not work open when car moves.

Car men will close cars when cars are inspected at junction points or in train yards, reporting to Master Mechanic cases when trains are received with doors open. Car checkers, switchmen, conductors and others having occasion to open a car door for any purpose must close it.

Trainmen picking up empty cars enroute must close car doors."

The Organization indicates that there has not been a change in the instructions with respect to car doors on the former NP trackage until the instant matter arose. The Organization further notes that the instructions indicated in the circular cited do not instruct switchmen and conductors to close doors where carmen are not employed. The Organization indicates further that closing car doors is a mechanical chore which is not generally germane to yardmen or roadmen's

duties. It is also argues that regardless of how trivial the act may seem to be the contract must be protected and preserved. In addition, the Organization maintains that because there is no rule specifically prohibiting the closing of car doors, that does not give the Carrier the right to make carmen out of trainmen and yardmen. It is argued further that the Carrier cannot show that former NP conductors, trainmen and yardmen have performed the work of closing car doors at terminals whether carmen are employed at that terminal or not.

Contrary to the position taken by Petitioner, Carrier insists that there is no rule support for the claims. Furthermore, Carrier maintains that the task of closing car doors is and always has been within the duties of the ground service employees. Carrier indicates further that the scheduled rules relied upon by the Organization do not bear on the particular claims, specifically the basic day and overtime rule (for both conductors and also train and yardmen) simply provides what a day's work shall consist of and what it shall be paid at. Rule 43(d), for example, for train and yardmen, as the additional rule relied upon, provides:

"Services rendered by regularly-assigned trainmen in excess of their regular run, will be paid for at regular rates for class of service performed with a minimum of one day."

A similar rule, Rule 69(a), is also cited for conductors. Carrier notes that these rules do not support the instant claims in any fashion. Specifically, Carrier states that it has been determined on this property that it is permissible to have operating employees close car doors without penalty and they are instructed to attempt to do so.

Concerning the background of the particular claims at Missoula, Carrier points out that until October 1, 1982, that particular point was designated as a 500-mile intermediate inspection point under the Department of Transportation Regulations. For that reason, a mechanical or parking car repair facility was headquartered at Missoula where carmen were employed and on duty 24 hours a day. On October 1, 1982, the 500-mile inspection requirement was changed to 1000 miles and as a result Missoula was no longer designated as an inspection point. Effective October 8, 1982, the carmen's positions were abolished and the mechanical repair facility at Missoula was closed.

It was after that date that the claims herein began to appear.

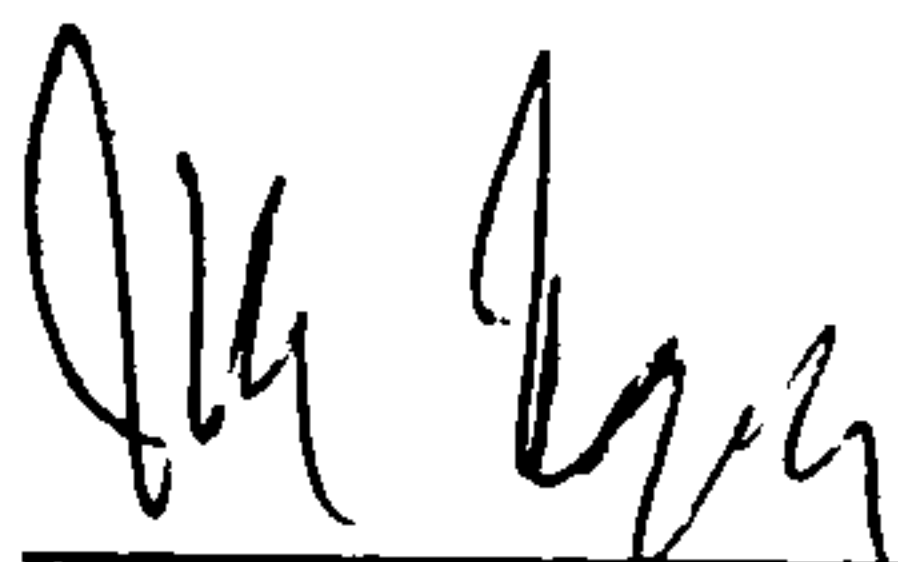
The essence of Carrier's position is that the Organization has not met its burden of proof in this dispute since the opening and closing of car doors is and always has been an integral part of the duties of conductors, trainmen and yardmen. In short, Carrier argues that there is not even an iota of proof to indicate that the opening and closing of car doors by the employees involved herein was in violation of any schedule agreement provision. According to Carrier, it appears that the Organization is arguing that the responsibility for closing car doors has historically and exclusively been performed on this property by another craft or class of employees. The craft involved obviously appears to be carmen, according to Carrier, and no evidence whatever has been provided indicating that that craft has that exclusive right. In terms of the Organization's failure to assume its burden of proof, Carrier argues that the Organization's case would be based on either rules which would establish the Organization's position or settlements or awards. None of the above have been presented by the Organization to establish the basic elements of its case. On the contrary, Carrier notes it has supplied specific factual evidence establishing that trainmen, yardmen and conductors have participated in closing car doors at the location involved over the years without objection by the Organization. Thus, not only did the Organization fail to show exclusivity in the performance of closing car doors by some other craft, but the facts of the matter are that members represented by the Organization itself have been involved in that activity over a long period of time. Carrier has also cited a number of awards dealing specifically with the issue involved herein. Most closely resembling the case herein is Award No. 8 of Public Law Board No. 2909 (involving another carrier) in which the Board held as follows:

"The shutting of the door is not exclusive by contract or past practice. The closing of a door on a freight car is unassigned work and may be performed by any employee of the Carrier or any of its shippers. The work involved in this dispute is not repair work and the only purpose in requiring the closing of the car door was to permit these claimants to proceed with other duties. This work did not benefit anyone else or any other craft. The Organization has failed in this instance to sustain its burden of proof of exclusivity of the involved work in the carmen. Therefore, this claim will be denied."

Based on the entire record of this dispute, the Board is of the opinion that the opening or closing of car doors for any purpose is a task which can be properly required of conductors, trainmen and yardmen without any additional compensation. The Organization has failed to establish that this task has been traditionally customarily performed by any other craft or that any rule or settlement or award supports its position. The burden of proof has not been met by the Organization and there appears to be no merit to the claims. They will be denied.

AWARD

Claims denied.



I. M. Lieberman, Neutral-Chairman



Wendell Bell, Carrier Member



K. Levin, Employee Member

St. Paul, Minnesota
December 30, 1985