

PUBLIC LAW BOARD NO. 1312

Award No. 532

Docket No. 618

26042/430

Case No. 19949

Parties United Transportation Union (CT&T)

to and

Dispute The Baltimore and Ohio Railroad Company

Statement

of Claim: Claim of Passenger Conductor A. F. White, Flagman C. Goerge and Baggage man W. G. Miller, Jr. for Freight Rate of pay 205 miles Cumberland to Parkersburg for service performed on December 2, 1965.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 19, 1974, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimants, on December 2, 1965, were the regularly assigned crew members of passenger Train No. 11 that operated between Cumberland, MD, and Parkersburg, W. Va. On arrival at Grafton, W. Va., an intermediate point, Rail Testing Car R-1-2 (Sperry Car), was attached to the rear of Train No. 11. Thereafter, while Train No. 11 operated enroute from Grafton to Parkersburg, said Rail Testing Car tested for defective rails and joints, as well as the curvature and elevation of the rails and passenger train speed. As a result, Claimants sought to be paid the freight rate of pay for their tour of duty which claim was denied. They were allowed only the passenger rate.

The Employees assert that Claimants performed work train service because after said Rail Testing Car became attached to Train No. 11 it became a portion of Train No. 11 and was thus under the direct responsibility of Claimant Conductor and his crew.

The Employees referred to Article 3 of the June 25, 1964 UTU National Agreement - Self-Propelled Machines" noting that Carrier had performed freight service and work train service without the necessity of using

road freight service employees thereon. Lastly, it is contended that Conductor's Rule 50-2(c)- More Than One Class of Road Service and Trainmen's Rule 85(b) are also applicable. Said Rule 50-2(c) reads:

"(c) Passenger service, except that helper or pusher service not a part of regular passenger service, or wreck or work train service, should not be required except in emergencies."

Rule 85(b) reads:

"Passenger trainmen enroute or during the course of a day's work or assignment will begin another day when placed in another class of service."

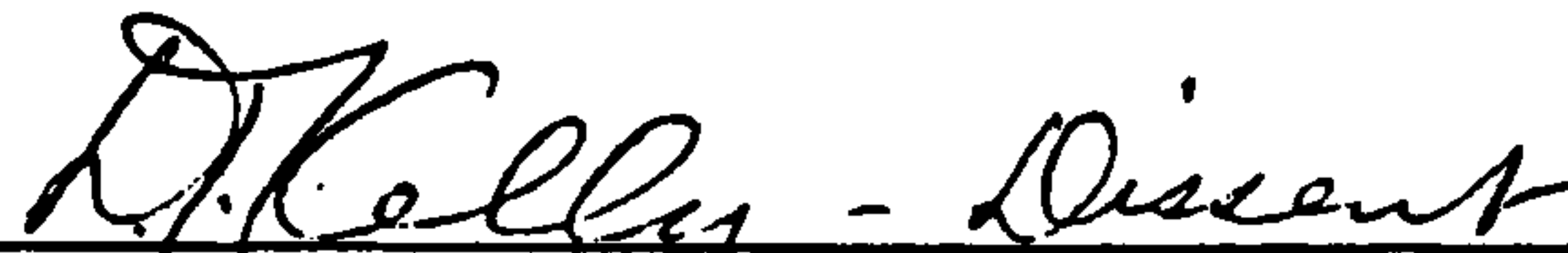
Here, it is agreed that the Sperry Rail Testing Car was "live" and in active service and was involved in the testing of rails. In such affirmative circumstance, we find merit to this claim. The mere hauling of a Sperry car would not per se place Claimants in an another class of service. However, the facts are that the Sperry car was otherwise. Hence, there is a valid basis for the instant claim.. Therefore, the claim will be sustained.

Award: Claim sustained as per findings.

Order: Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.



A. F. White, Employee Member



D. T. Kelly, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member