

PARTIES TO DISPUTE:

The Cincinnati, New Orleans and Texas Pacific Railway Company
and
United Transportation Union

STATEMENT OF CLAIM:

"Claims of CNO&TP engineers and firemen for fifty miles lapback on the following dates:

Engineer E. B. Compton - 50 miles - February 23, 1968.

Fireman H. E. Ely - 50 miles - March 4, 1968.

Engineer T. U. Everett
and Fireman J. Carter - 50 miles - March 8, 1968.

FINDINGS:

The Board, upon the whole record and all the evidence, finds that the Employees and the Carrier are employees and carrier within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute, and that the parties to the dispute were given due notice of the hearing thereon.

The claims, as submitted on the grounds that the movements referred to were lapback movements, read as follows:

"February 23, 1968. Allow 50 mile lapback for assisting No. 52 in putting away a hot box at Silerville MP 198. Assisted by pushing car in clear of plant on No. 2 track. Then was ordered by Chief Dispatcher to back our train up from Silerville to Pine Knot and return to get in clear so No. 52 could double its train together. MP 198 to 196 and return."

"March 4, 1968. : Please allow 50 miles lapback for pulling the 39 rear cars of Extra 3106 from Pilot Mt. to Sunbright to set out a hot box at the north end of passing track. I was on CS 153."

"March 8, 1968. Allow fifty miles lapback for cutting off train at Tateville and assisting No. 20 in putting train together at Grove, Ky., from milepost 171 to 166 and back to 171 to continue on south."

The claims were denied on the grounds that the moves constituted Helper service, under the "More Than One Class of Road Service" rule and not a lapback movement.

It is noted that the parties have agreed that certain claims of record, as listed in Petitioner's Ex Parte submission, will be disposed of on the basis of the Board's decision in the instant case.

The record shows that a substantial number of prior claims that appear to be similar to the claims herein were paid by the Carrier under Section 2 of the Lapback Memorandum Agreement. In allowing one such claim the Carrier stated, in part, "...claimants moved over one-half mile in one direction for the purpose of performing additional service not a part of the continuous trip, thereby interrupting such continuous trip, and therefore the proper payment would be for 50 miles at the through freight rate." (See letter of February 20, 1957 from the Carrier to the General Chairman of the former BLF&E - now part of the UTU) Petitioner averred at the hearing before the Board that this letter set the policy on this property for the settlement of such claims in the future.

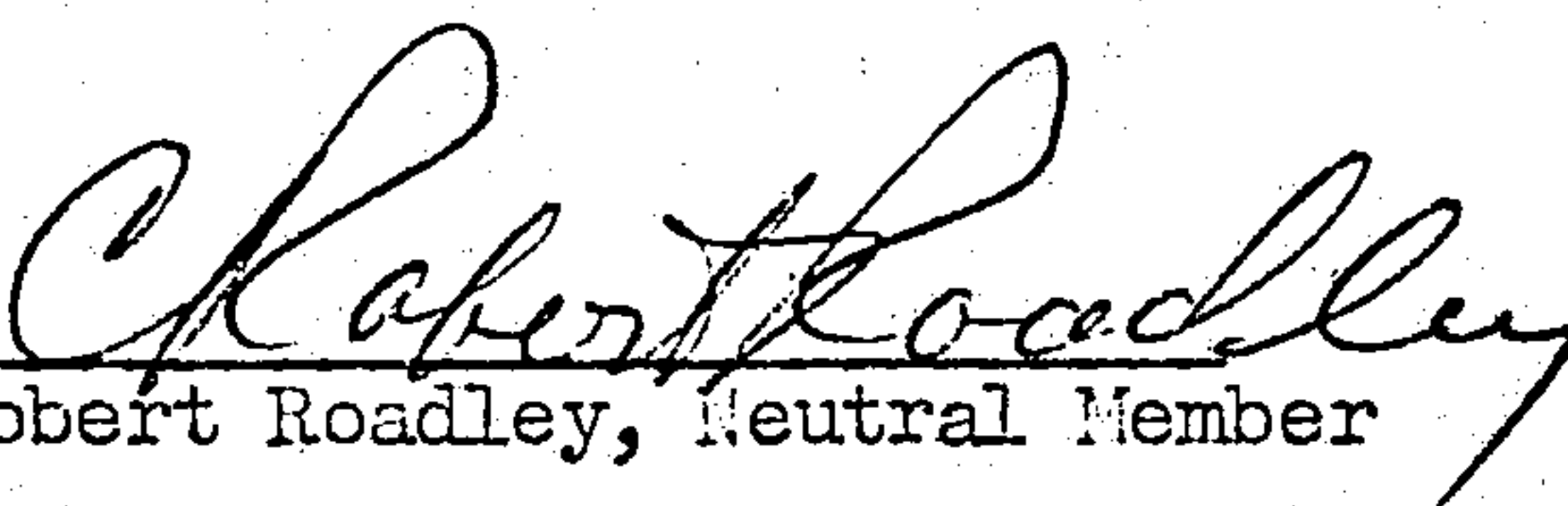
Carrier submission contains a letter, dated March 5, 1960, to the same General Chairman, which denied a claim that was subsequently withdrawn, which stated in closing, "The provisions of the Lapback Memorandum are inapplicable to the clearing of opposing trains and payment of this claim is respectively declined." This Carrier position was amplified by a number of Decisions of the Disputes Committee established pursuant to the Arbitration Award of December 3, 1952, and cited by the Carrier, wherein it was ruled that the clearing of a disabled train was covered by the More Than One Class of Service rule. This same principle was the subject of a denial award on this property, Award No. 90, Public Law Board No. 626, also cited by the Carrier.


However, none of the instant claims involve "clearing of opposing trains"; what is involved is the performance of additional service not a part of Claimants' continuous trip and not part of their assignments. Illustrative of this rationale is a claim paid by the Carrier in 1971 under the Lapback Memorandum wherein claimant was instructed to proceed from Oneida to Pemberton, pick up a bad order car set out by a train other than his own, and return said car to Oneida. The record shows that a number of similar claims of recent date were paid, based upon the same general principle.

It appears to the Board, therefore, that the history of handling claims such as the ones at bar on this property more logically supports the position of Petitioner rather than the proposition that these Claimants were merely engaged in Helper Service as envisioned by the excluding provisions of the Lapback Memorandum Agreement. Consequently, based upon the circumstances of these particular claims as reflected in the record before us, a sustaining award is deemed proper.

AWARD: Claims sustained for the reasons stated in the Findings

ORDER: The Carrier shall comply with this Award No. 13, of Public Law Board No. 1266, on or before thirty days from the date affixed below.


C. Robert Roadley, Neutral Member


R. L. McCollum, Employee Member


T. C. Sheller, Carrier Member

Dated: 7/26, 1974