

PUBLIC LAW BOARD NO. 2049

Joseph Lazar, Referee

AWARD NO. 183  
CASE NO. 182  
T-7028

PARTIES ) UNITED TRANSPORTATION UNION  
TO ) vs  
DISPUTE ) BURLINGTON NORTHERN RAILROAD CO. (Former FWD)

STATEMENT  
OF CLAIM: Claim is being made for fifty-five minutes (11 Mi.)  
in addition to all other earnings, for the following  
listed crew account of being required to perform more  
than one class of Road Service.

UTU-LC-3283 Cond. J. T. Veal, Brkm. R.M. Kelley &  
C.H. Balle. T/S No. 3, of 6-7-83.

FINDINGS: The Board, after hearing upon the whole record and all  
the 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 Memorandum of Agreement dated  
February 2, 1978, that it has jurisdiction of the parties and the  
subject matter, and that the parties were given due notice of the hear-  
ing held.

On June 7, 1983, date of claim, claimants were in assigned  
local service between Wichita Falls and Quanah, Texas. Between 3:00 p.m.  
and 3:55 p.m., on instructions, this assignment unloaded ballast at  
Iowa Park, Texas. Claimants were paid for the entire service at the  
Local Rate-Basic Day, for Conductor, \$93.19, and for Brakemen, \$86.96.  
The Work Train-Basic Day, at time of claim, for Conductor, was \$92.53,  
and for Brakemen, was \$86.28. Accordingly, payment for the entire  
service performed on June 7, 1983, was made at the highest rate applicable  
to any class of service performed.

The agreement upon which the employees rely is Appendix  
H of the applicable agreement entitled More Than One Class of Road Service  
Rule - National Agreement December 3, 1952 (Carrier's Exhibit No. 9).

Section 1 of this Agreement states:

"1. More Than One Class of Road Service Rule: Road employees (engineers, firemen and helpers, conductors and trainmen) employed in any class of road service may be required to perform two or more classes of road service in a day or trip subject to the following terms and conditions:

A. Payment:

1. Except as qualified by A-2 below, payment for the entire service shall be made at the highest rate applicable to any class of service performed, the overtime basis for the rate paid to apply for the entire trip. Not less than a minimum day will be paid for the combined service."

Paragraph A-2 of the Agreement reads in part:

- "2. Road employees (engineers, firemen and helpers, conductors and trainmen) in through freight and passenger service only shall receive full payment for the regular day or trip based on miles or hours applicable to the regular day or trip plus extra compensation on a minute basis for all additional time required in the other class of road service. The rate paid both for the regular trip and for the additional time shall be the highest rate applicable to any class of service performed during the entire day or trip." (under-scoring added).

The National Agreement of December 3, 1952 containing the above-quoted language came into being through AWARD of BOARD OF ARBITRATION established under the July 17, 1952 arbitration agreement in accordance with AGREEMENTS of MAY 23, 1952 with ENGINEERS-FIREMEN-CONDUCTORS on the matter of MORE THAN ONE CLASS OF ROAD SERVICE, Washington, D.C. December 3, 1952.

The Labor Members on this Arbitration Board dissented. They stated, in part:

"Second, there is no justification in sound theory for exempting local freight crews from receipt of the modest additional allowance provided in Section A2 of the award. True, most local freight crews required to perform additional road service of another class will receive compensation at the overtime rate for the time spent in its performance, and they would thus be paid substantially as if included under the provisions of Section A2. But the many local freight crews who normally perform their service at speeds greater than the established 12-½ miles per hour speed basis are the very local freight crews most likely to be inducted into work train and other additional classes of road service. These speedier local freight crews will not receive under the award any additional compensation for performing additional service of another class unless and until road overtime accrues to them, and then only to that extent. Patently, under the award there will be occasions when local freight crews who are interrupted to perform extra service for the carrier will receive less total compensation than through freight crews paid under Section A2 in virtually identical circumstances. The labor members cannot willingly condone this discrimination against local freight crews."

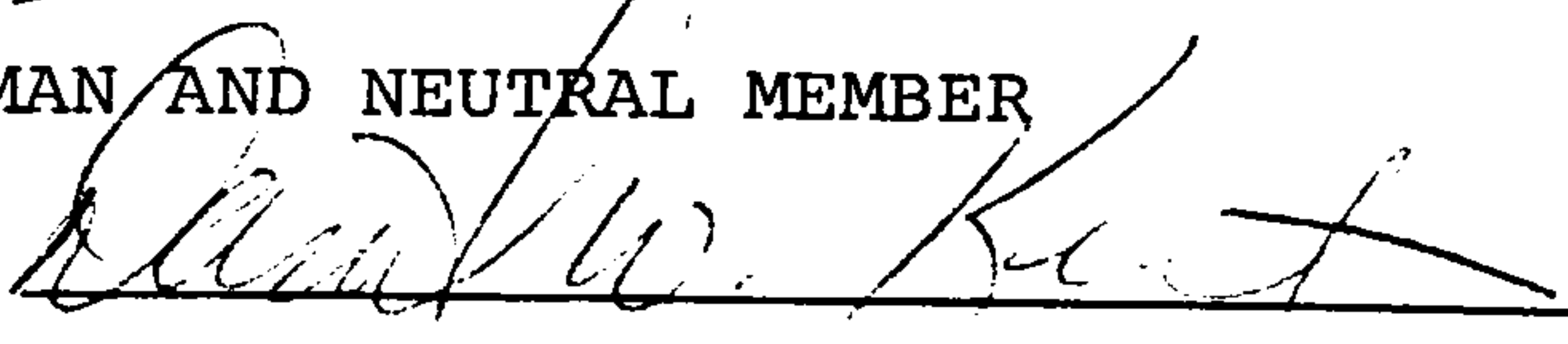
It is crystal clear that the claimant local freight crew is subject to the provisions of Section 1 A and is not entitled to the payment provision of paragraph A-2 of the Agreement.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.

  
\_\_\_\_\_  
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

  
\_\_\_\_\_  
J. A. ALFORD, EMPLOYEE MEMBER

  
\_\_\_\_\_  
DAVID W. KENT, CARRIER MEMBER

DATED:   
\_\_\_\_\_