

PUBLIC LAW BOARD NO. 2212

AWARD NO. 26
CASE NO. 26

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

vs.

PORTLAND TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim one day's pay each for first out crew consisting of one Foreman and two Helpers at about 11:15 a.m., August 23, 1979, account of a Union Pacific crew performing switching service in the Depot Yard.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act as amended; that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter; and that the parties were given due notice of this hearing.

FACTS

On August 23, 1979 at about 11:00 a.m. a UP train was made up on the transfer Track 11, outbound. A PT crew switched from Track 22 and added cars to the same outbound transfer on Track 11. A UP transfer crew arrived, coupled onto the train on Track 11 to pull south out of the terminal. The Organization alleges that the PT crew remained at the north end of Track 11 to assist the move out of the yard by shoving if it became necessary to do so.

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At approximately 12:00 noon a second UP transfer crew arrived at the Depot Yard with cars for Track 13. The PT crew was instructed to leave Track 11 for other duties. The UP transfer started their return movement to Albina Yard but was stalled before completing their move out of the yard. The UP crew from Track 13 then proceeded to Track 11 coupled to the north end of the stalled transfer train and shoved to complete the transfer.

THE ORGANIZATION'S POSITION

The Organization relies primarily upon Rule 17(b) and (c) contending that only PT crews have seniority rights to perform all switching services within the Terminal. First Division Award No. 3115 is cited in support of the seniority rights. In that case the Washington Terminal crew had the right to perform all work on "rails" of the Terminal. Also, First Division Award No. 467, a case in which it was decided that the movement made was switching, worked that belonged to the Terminal crew. To the same effect was First Division Award No. 1587. PLB No. 1988 Award No. 4, on this property and involving a UP transfer required shoving of the train being used to leave the terminal in order to clear the track. The sustaining award held that the shove was for more than to merely clear the track thereby involving switching that belonged to the PT crew. First Division Award No. 14074 upheld a practice as to overtime pay for deadheading after the train had died under the Hours of Service Law, predicated upon an ambiguous rule and following a canvass and understanding that was followed pursuant to the result of the canvass of payments that had been made.

The Organization also relies upon the January 19, 1951

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Agreement 4; crews of the NPT (now the PTRR) "may shove outgoing trains and/or transfers, departing from south end of Depot Yard---". It is contended that this agreement was reached as a result of the difficulty in leaving the south end of the Terminal requiring PT crews to go beyond yard limits. It is argued that for 30 years, pursuant to this agreement, the PT crews have performed such shoving without penalty claims being made and that only PT crews have made such shoving movement on an almost daily basis.

THE CARRIER'S POSITION

The Carrier indicates some doubt concerning the shoving movement contending that they have no record of an instruction to the UP crew to perform the shove. In any event, the Carrier contends that Rule 17 does not grant exclusive rights to perform all work in the terminal, referring to Agreement 4. It is argued that the Agreement states, "may shove outgoing trains and/or transfers," thereby demonstrating a permissive authority rather than a mandate to provide such work only to the PT crews. The Carrier has referred to PLB No. 1413 Award No. 7 on this property involving a BN train. A transfer crew entering the yard cut off a caboose, made a set out and a pick up coupled to the caboose that had been left on the lead and departed. Claiming that the handling of the caboose was switching, the Organization cited Article III, Section 2(e) that provided, "PTRR crews may be permitted or required to assist tenant crews in the yarding of trains, in the handling of transfer deliveries---". The denial award in that case stated that the phrase "may assist tenant crews" did not mandate that only PT crews must be used.

FINDINGS

The Board finds, from the record that a shove was made as alleged by the Organization.

The Carrier has interposed an interesting rationale that the UP merely took advantage on this date of the fact that another transfer crew was in the yard at the same time and simply had that crew attach its engine at the rear of the transfer movement in order to assist the train out of the yard. The Carrier attempts to lend greater strength to this by the fact that the terminology of Agreement 4 and Article III, Section 2(e) provides permission and does not preclude such a move.

Although not clearly stated in the record it appears without contradiction that the movement of the transfer train to the Albina Yard by a UP crew is proper even though it be on the rails in the Portland Terminal. Thus it would appear that the scope of the work of the PT crews does not extend to all movements within the yard. The Board finds that all switching movements within the yard are properly within the scope of the PT crews. Consequently the issue presented is whether or not the shoving of the transfer train constituted switching. In this case the shove was made not merely to clear the track or incidental to the work of the transfer crew but was for the purpose of completing a yard movement to the extent that it may be classified as switching. In PLB No. 1988 Award No. 4 reference is made to PLB No. 844 Award No. 60 and language therein that is pertinent, to wit:
"Theoretically, every shifting of equipment within a yard may be at least a segment of work of or contributory to the work of switchmen in that it may cause the latter to have less to do later-even if only by

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the 'trimming' of congestion on a track."

A W A R D

Claim Sustained
30-Day Order

Dated: *May 3,* 1983
Portland, Oregon

Irving T. Bergman

IRVING T. BERGMAN, Neutral Member

B. Levin

Organization Member

E. K. Strong

Carrier Member