

PUBLIC LAW BOARD NO. 3953

AWARD NO. 5

SEABOARD SYSTEM RAILROAD

VS.

UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim of Outsider Hostler M. V. Somerset and Helper J. L. Caulder on Time Ticket No. 2 dated January 9, 1985, for eight (8) hours account not called from MTB to perform hostling at Davis Yard, Navassa, N.C. (Wilmington, North Carolina)

STATEMENT OF FACTS: Messrs. Somerset and Caulder are employees of the former Seaboard Coastline Railroad (SCL) and are covered by the agreements with the Locomotive Firemen and Hostlers and Outside Hostler Helpers, represented by the UTU(E).

Prior to April, 1984, continuous hostling service was provided at carrier's Davis Yard, a part of the Wilmington, North Carolina operation. Beginning in April, 1984, due to a decline of business, the carrier abolished the 3:00PM to 11:00PM hostler assignment. A further reduction in force was made on December 27, 1984, when the carrier abolished the 7:00AM to 3:00PM assignment. These reductions were occasioned by a 67% decline in train operations within the terminal. As a result, only one train was daily scheduled to arrive and depart from the terminal. The carrier's reduction in force created a sixteen

hour period, from 7:00AM to 11:00PM each day, in which no hostling service was scheduled.

On January 9, 1985, at approximately 2:00PM, a car inspector, with the aid of an assistant car foreman, disconnected the hoses, safety chains and jumper cable between Locomotive Nos. 510 and 6682. In addition, these two employees also positioned the brake valves on Engine 510, in preparation for a single unit operation.

Outside Hostler M. V. Somerset and Helper J. L. Caulder (hereinafter claimants) were first and second out, respectively, on the Wilmington Manning Training Board on such date. However, claimants were not called to perform the above-described functions. Therefore each claimant submitted a penalty claim for a minimum day at the applicable rate of pay. Such claims were timely denied by the carrier and subsequently appealed to this board.

FINDINGS: The claims before this board represent another chapter in the endless debate over the jurisdictional boundaries of hostler work. The central issue is immersed in a legal morass of mergers, unclear bargaining history, conflicting interpretations by neutrals and inconsistent settlements by the parties.

The carrier argues that the essence of the dispute involves a question of exclusivity. It avers that there is no contractual authority, established practice, or claims resolution pattern which, either expressly or impliedly, reserves to the hostling craft an exclusive global jurisdictional claim on all functions generically identified as "hostling".

The union, while not claiming global exclusivity on hostler functions, nevertheless does claim "point by point" exclusivity. Further, while acknowledging that the specific functions involved are not topically listed in the agreement, it argues that the nature of the tasks performed is necessarily associated with preparing inbound locomotives for outbound assignment, which is specifically contemplated by Article 48 h (1) (b) and (c).

Based on our examination of the proof offered, it is evident that, in so far as Article 48 paragraph (f) (1) is concerned, pockets of exclusivity have been turned on the lathe of negotiation, local practice, claim settlements and arbitration. Such a local practice was in effect at the Davis Yard on January 9, 1985, whereby hostlers, when on duty, routinely performed these tasks in connection with the turning and preparation of engines for outbound service.

Both parties apparently agree, and we concur, that the November 1, 1985, UTU National Agreement may have mooted any prospective application of our decision, by codifying the permissibility of using both operating and non-operating employees to perform duties generally identified as "hostling". The carrier urges us to resolve the present dispute, and thereby foreclose a continuation of this timeless argument, by retroactively applying the principals adopted in the new agreement. Conversely, the union rejects the concept that the new rule has, or should have, any bearing on the resolution of this dispute or other disputes arising prior to November, 1985. We agree with the

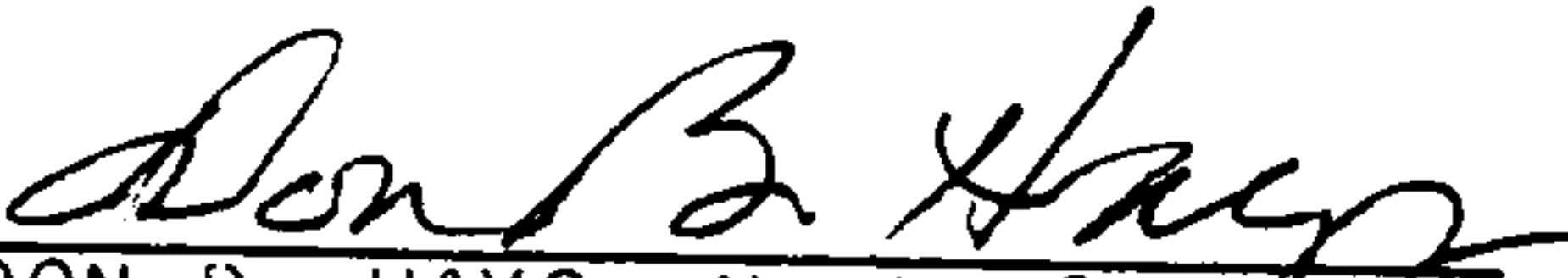
union's position, particularly in view of the carrier's Section 6 Notice, served under date of January 13, 1984.


We next consider what amount of penalty pay, if any, should be assessed for bypassing the claimants. The union argues that this issue is controlled by Article 24 (c). The carrier responds, that if any jurisdictional trespass occurred, the intrusion was slight. Therefore, the penalty pay, if any, should be limited to the reasonable amount of time necessary to perform the functions involved. In support thereof, it cites PLB 3502, Case No. 4, Award No. 6. In such award, Referee LaRocco concluded that a full day's pay for performing certain enumerated routine tasks, involving extremely short periods of time, is both speculative and excessive. The board then proceeded to arithmetically determine the average amount of time necessary to perform the tasks involved and establish that "number of minutes" as a penalty pay benchmark. We find such holding to be inconsistent with other awards and settlements made between the parties hereto.

In past grievance settlements, when the carrier was persuaded that a jurisdictional violation had occurred, it offered a full day's penalty pay, notwithstanding the amount of elapsed work time involved. Although one such settlement was characterized as having been made in error, it does not stand alone in the history of this issue. As stated by Referee David H. Brown in Award No. 8, PLB 2218 (UTU vs. A&WP), "We can disregard claims paid in error, but we cannot ignore precedential settlement authorized by the carrier's highest officer handling claims."

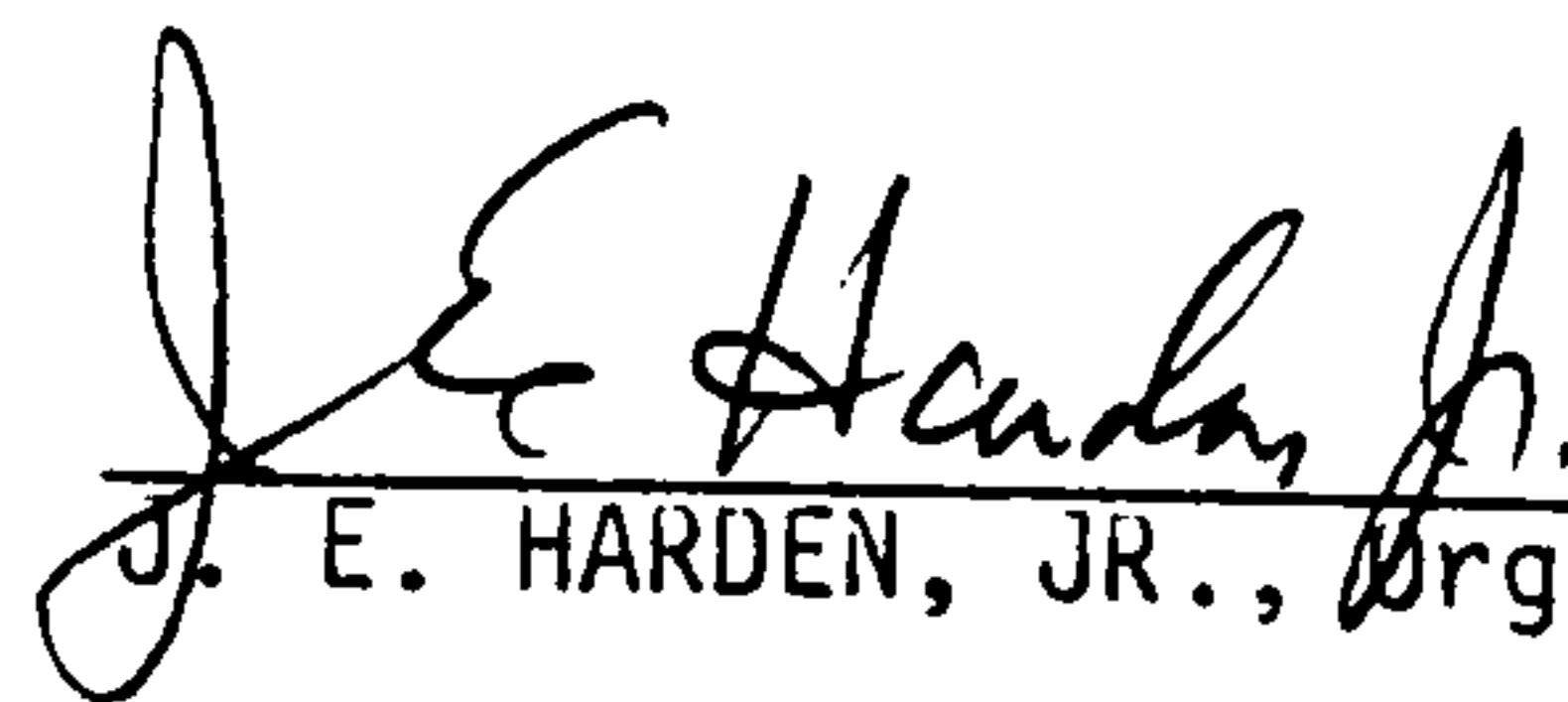
Based on the whole record, the board finds that the carrier violated the provisions of Article 48 (f) (1) of the agreement in assigning this work to supervisory personnel. Further, the claimants are, by virtue of past practice, each entitled to be compensated under Article 24(c).

AWARD: Claim sustained. Carrier is directed to implement this award within 30 days from the date hereof.


DON B. HAYS, Neutral Member


R. O. KEY, Carrier Member

Dissenting


J. E. HARDEN, JR., Organization Member

Nov. 25, 1986
DATE