

PUBLIC LAW BOARD NO. 2278

Award No. 4

Case No. 4

UTU File 4.65

Carrier File SW-7.78.22

Parties United Transportation Union (S)

to and

Dispute Kansas City Terminal Railway Company

Statement of Claim Claim for one day's pay at applicable rate on behalf of the senior available switchman who stood first out to work on April 25, 1978, account his having supplanted and replaced by the Superintendent in the 7:59 AM to the 3:59 PM Mill Street Yardmaster as described.

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 August 9, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The Employees contend that on April 25, 1978, during the tour of duty of Yard Foreman W. Audley and crew, a 7:30 AM assignment, was given radio instructions to go to Track 1015 and get 31 cars together for delivery to the Union Pacific. Foreman Audley started walking Track 1015 and after traversing some 6 or 7 car lengths the cars thereon started moving west without a signal being given by him. Foreman Audley gave a stop signal. When he arrived at the west or rear end of the drag he found Yardmaster Holtz on the opposite side of the drag and the Yardmaster told Foreman Audley: "I got him."

The Employees assert that subsequent discussion amongst the crew members developed, that after Foreman Audley had started walking his drag the Superintendent, using the radio, told Engineer K. Manion to shove back and make the joint on two cars to get the rail together. Thereafter, Yardmaster Holtz gave said Engineer radio instructions to make the joint. Such instructions were allegedly heard by UTU Vice Chairman S. Baldwin who was in the yard on another engine.

Carrier refers to the denial of Superintendent Apple dated July 6, 1978 which, in pertinent part, reads:

"There are no indications that a switchman was being supplanted or replaced by himself for the 7:59 AM Mill Street Yardmaster because there was no switching done by either party and no violation of any rules of throwing switches nor signals given to move any cars but the instructions were given by the Yardmaster on the radio which is daily routine work."

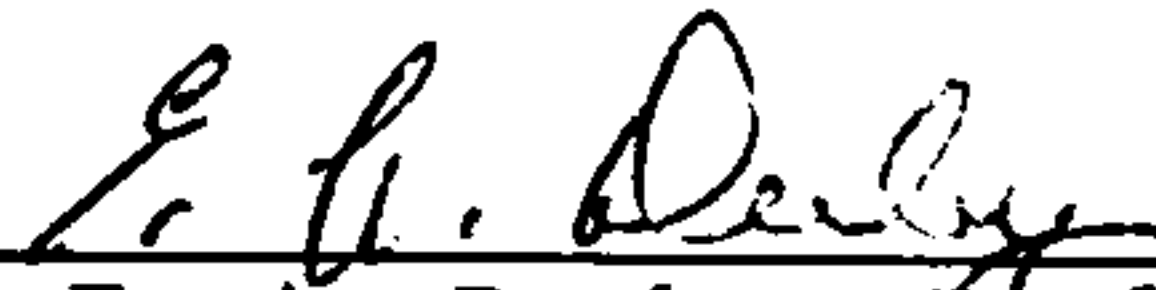
The Carrier asserts that the claim is premised on hearsay evidence and not based on the personal knowledge of witnesses. Lastly, that the claim, in effect, is an attempt to add an additional member to the switch crew thereby having a four man crew.

The Board finds that the Employees position here should prevail. The Employees assertions were not denied. The Superintendent's July 6, 1978 denial, in effect, is an admission of that which the Employees here complain of. The giving of a signal for the movement of a train as distinguished from giving permission to commence a movement is the basis for the employees complaint. We find merit therein. Therefore, the instant claim will


be sustained.

Award Claim sustained.


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



E. A. Derby, Employee Member



U. B. Llewellyn, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member