

SPECIAL BOARD OF ADJUSTMENT NO. 910

PARTIES) UNITED TRANSPORTATION UNION (T)
TO)
DISPUTE) CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

"Claim of Conductor D. Caron and Brakeman F. Seddon dated August 31, 1982, for one (1) day's pay in addition to all other earnings for being required to inspect train for defects on B&M Railroad when no car inspector was available."

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; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On the claim date, the Claimants were assigned to Train SPSE-1, an assignment advertised to perform through freight service from Springfield, Massachusetts to Selkirk, New York. After going on duty at Springfield Station, Claimants took the motive power for their train to the Boston & Maine Railroad Yard in Springfield, Mass., to pick up their over the road train of 44 cars.

While at the Boston & Maine Railroad Yard the Claimants were directed by a B&M Railroad Yardmaster to inspect their train because he reportedly did not have any car inspectors on duty at that particular time.

The Organization maintains that the work required of Claimants by the B&M Yardmaster was more than a routine brake test, or work not part of the regular duties of a road train crew. It says that the Claimants performed both an initial terminal air brake test as well as a walking inspection of both sides of the train, or work which it states is normally performed by Car Inspectors at B&M's Springfield Yard.

The Organization says that Rule 7, Performance of Service By Road Freight Trainmen, clearly defines the regular assigned work of a road freight crew within yards. This Rule reads as follows:

"(a) Road freight crews may be required at any point where yard crews are employed to do any of the following as part of the road trip, paid for as such without any additional compensation and without penalty payments to yard crews, hostlers, etc.:

(1) One straight pick up at another location in the initial terminal, (in addition to picking up train) and one straight set out at another location in the final terminal (in addition to yarding the train).

(2) One straight pick up and/or set out at each intermediate point between terminals.

(3) Switch out defective cars from their own trains regardless of when discovered.

(4) Handle engines to and from train to ready track and engine house, including all units coupled to the operating unit (units).

(5) Pick up and set out cars of their trains from or to the minimum number of tracks which could hold the cars provided, however, that where it is necessary to use two or more tracks to hold the train it is not required that any track be filled to capacity.

(6) Exchange engine of their own train.

(b) At points where a yard crew or yard crews are employed, the starting time of the first yard crew assignment will begin a twelve-hour period (herein called the first twelve-hour period) within which road crews may not perform yard service. Road crews may be required to perform any yard service during a second twelve-hour period beginning at the expiration of the first twelve-hour period provided yard crew assignments are not assigned to start or terminate during such second twelve-hour period.

(c) Road freight crews may perform any yard service at yards where yard crews are not employed."

In support of its position, the Organization directs the Board's attention to various awards of other boards of adjustment whereby it had been held that by being required to perform work assigned to carmen and to assume responsibility beyond their normal duties in the making of a brake test that trainmen were entitled to penalty compensation. In this regard, the Organization cites: Award No. 18 of Public Law Board No. 318 (UTU-Santa Fe; Referee David H. Brown); Award No. 54 of PLB No. 1048 (UTU(S)-Western Pacific RR; Referee Preston J. Moore); and, Award No. 41 of PLB No. 1135 (UTU(C,T&Y)-Santa Fe; Referee Gene T. Ritter).

The Organization also cites Award No. 14 of PLB No. 2379 (UTU(S)-D&RGW RR; Referee David H. Brown) as being supportive of its position that where grievants performed service for a foreign

carrier upon instructions from such foreign carrier's yardmaster they are entitled to a penalty claim. The Organization also directs attention to Award No. 38 of PLB No. 1299 (UTU-Northeast Corridor Region of Former Penn Central; Referee Francis X. Quinn) and Case No. 12 of PLB No. 2703 (UTU-UP RR; Referee Robert J. Ables) as supportive of its position that grievants are entitled to claim payments when required to perform work outside the scope of their contractual work.

The Organization especially referenced the Decision of PLB No. 318 in its Award No. 18, and whereby it was stated as follows in resolution of a claim involving brakemen being required to make a terminal inspection and air test on their Santa Fe Railway train:

"It is unquestionably true that brakemen have assisted carmen in making inspections and testing as required by Article V of the Carmen's Agreement. But there is a fundamental difference between assisting (coming to the aid of, or giving support to) someone and relieving (taking the place of) someone. Carrier's position would ultimately eliminate all craft lines, and while there might be some logical support for such elimination, nevertheless, it certainly is contrary to the various agreements solemnly entered into between Carrier and the various Brotherhoods.

The scope provisions of the Trainmen's Agreement clearly reflect that brakemen are to do the ordinary and customary tasks of brakemen, not to substitute for absent carmen. We are perfectly aware of the decisions holding that grievants must cite a specific rule violation, and we endorse this general rule. This rule is salutary because Carrier has the right to know specifically just what grievant is contending. But scope of work is so fundamental that Employes should not be held to a technicality where it is perfectly apparent that they are complaining of being required to do work outside the scope of their Agreement. Here former Chairman Faulkner apprised General Manager Stuppi, 'It is our position these brakemen were required to perform work assigned to carmen and to assume responsibility beyond their normal duties.'

We agree with that position. The Agreement does not contemplate substitution of brakemen for carmen; it was violated."

It is Carrier's position that the work required of Claimants did not constitute a terminal test of the air brakes and it was not, therefore, work that was in violation of Rule 7. The Carrier states that there is a vast difference between a terminal test of air brakes as opposed to a road test of air brakes, or that type test which it says Claimants performed at the B&M Springfield

Yard on the date in question.

In support of its position, the Carrier submits and directs attention to its Air Brake and Train Handling Rules and Instructions (Instructions EC-99) and descriptions therein of required action for the performance of various air brake tests (Initial Terminal Test and Inspection; Transfer Train and Yard Train Tests; Road Test; Intermediate Book Tests; and, Running Tests). In this connection, the Carrier submits that the steps involved in the completion of an "Initial Terminal Test and Inspection" are far more numerous and complex than those involved in what it says is the comparatively minor "Road Test."

The Carrier also states that its position is supported by the Findings of Award No. 132 of Special Board of Adjustment No. 589 (UTU-T and Penn Central Co. - Referee Jacob Seidenberg) and wherein it was held in part as follows:

"The Board finds that the claim cannot be sustained because the evidence of record clearly demonstrates that the Claimants did not make terminal test of air brakes as that term is used in Rule 8-J-1. The Carrier has shown that there are at least two or more types of Initial Terminal Brake Tests. Through its Instruction Manual the carrier has shown the various functions which adhere to these several types of Brake Tests. The Board is unable to find, in light of this technical but probative evidence, that 'terminal tests of air brakes' as used in Rule 8-J-1 is a general term and applies to all tests of air brakes performed in a terminal. On the contrary, the evidence clearly proves that terminal tests of air brakes is a term of art and has a very specialized and finite meaning and application. It must be assumed that the parties used the term in its technical and not general sense when they incorporated it into Rule 8-J-1. There is no evidence to show that the term was used as synonymous to or the equivalent of a road brake test."

In addition to the foregoing, the Carrier asserts that the work in question was made at the direction of a third party (the B&M Yardmaster), and that it has no control over the B&M Yardmaster and cannot therefore be held responsible or liable for the directives and actions of another railroad's supervision. In this regard, it directs attention to Award No. 16743 of the First Division, NRAB (SUNA-Great Northern Rwy; Referee Boyd Leedom), and wherein it was stated, in part, as follows:

"The liability created by the awards of this Division on claims of this type involve a somewhat unusual extension of the principles of contract liability. One party, the employe, stands to gain at the expense of a second party, the carrier, not because of its failure but be-

cause of of the failure of a third party, the connecting line. Since the designation of the interchange track is a prerogative of management of the connecting line, the carrier is subjected to a liability that is dependent on factors outside of the carrier's control. . . ."

In the light of the extensive arguments advanced by the parties, it is unfortunate that the record as developed on the property did not fully set forth the extent of the air brake test as required of and performed by the Claimants in picking up their road train at Springfield Yard. It would have been especially helpful for the record to have shown whether such air brake test encompassed job functions generally performed by a Car Inspector as opposed to train crews at such location.

Absent evidentiary documentation, this Board must presume that since there is no dispute but that the Claimant crew was directed by the B&M Yardmaster to inspect their train and perform a terminal brake test because there were no Car Inspectors available or on duty, that they were indeed required to make a requisite terminal air brake test as would normally be performed by B&M Car Inspectors, in addition to being required to perform a so-called road air test in picking up their train at the Springfield Yard.

In reaching the above conclusion, the Board finds it particularly noteworthy that the Claimants' time slip included an unrefuted reference to the cars picked up being handled in interchange and that cars so handled are supposed to be inspected by each Carrier's own personnel according to Federal regulations. It is also worthy of note that the time slip included a notation following such comment which read: "Time 10:30 A.M. to 12:48 A.M." While there is no doubt the referenced time is inaccurate, we would presume that this was an attempt to show that the air brake test had taken 2 hours and 18 minutes to complete, albeit the time slip shows Claimants went on duty at Springfield at 10:30 P.M..

As concerns the Carrier argument that it cannot be held responsible or liable for the directives and actions of another railroad's supervision, this Board is not persuaded that Carrier has no control over a situation such as that here found to exist, particularly since it was indicated at the Board's hearing that Springfield Yard is operated as a consolidated yard in conjunction with the B&M Railroad.

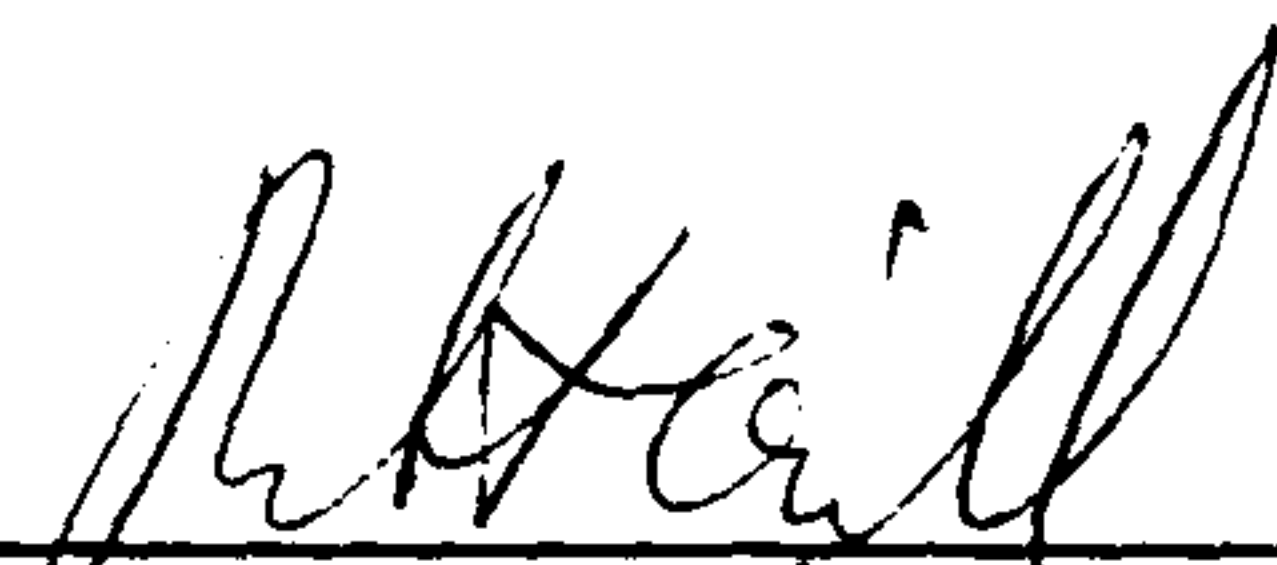
In the particular circumstances of record, it will be this Board's findings that the Claimants were required to perform work heretofore recognized to be outside the scope of duties of train crews assigned to pick up over-the-road trains at Springfield, Mass. Therefore, the claim will be sustained.

AWARD:

Claim sustained.



Robert E. Peterson, Chairman
and Neutral Member



Robert O'Neill
Carrier Member



Eugene F. Lyden
Organization Member

Philadelphia, PA
December 10, 1986