

PUBLIC LAW BOARD NO. 2212

AWARD NO. 34

CASE NO. 34

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

vs.

PORTLAND TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM

Claim is made for additional day's pay at appropriate rate for May 2, 1981, in favor of Switchman B.G. Reeves.

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 the claim date, claimant was working as a Switchtender at the Lake Yard. He was required to make a cut in a UP train, 15 cars behind the engine. He was working in the area where the cut was made at the time.

ARTICLE III, Section 2(e) provides:

"PTRR crews may be permitted or required to assist tenant crews in the yarding of trains, in the handling of transfer deliveries and/or assisting such crews in picking up and setting out of cars and such work shall not be construed as violative of any provision of the controlling agreements and shall not form the basis for the filing or presentation of penalty claims, except as provided in paragraph (f) hereof."

The same ARTICLE III in (f) provides:

"If required to go beyond switching limits to perform service as described in Article III Section (e) of this Agreement, switchmen will, without deduction from their earnings for that tour of duty, be paid actual time at the straight-time rate consumed until the return to switching limits, with a minimum of one hour."

Rule 16(a) entitled COMBINATION HELPER AND SWITCHTENDER JOBS, provides:

"Switchtenders may be assigned to perform a combination of yardhelper and switchtender's work within the area adjacent to their station."

#### THE ORGANIZATION'S POSITION

It is contended that Article III, Section 2(e) refers to a full "PTRR crew" to assist tenant crews in yarding of trains etc.; that this does not refer to a single person of a crew performing the work that was performed in this case. It is argued that by requiring the claimant to assist the UP crew by making the cut constructively made him a member of that crew thereby performing work that was outside the scope of his duties and entitling claimant to an additional day's pay.

THE CARRIER'S POSITION

It is contended that under Rule 16(a) the claimant could be utilized as a combination switchtender-helper for a number of yardmen duties, not just for throwing switches; that lifting a pin to make a cut of cars is not outside the work of a yardhelper and thus may be performed by the switchtender-helper under the Rule. It is argued that if it were otherwise, there would have been a category of just switchtenders and not the combination of switchtender-helper. It is further argued that combination helper-switchtenders have acted as pilots without objection from the Organization and that since the crew consist agreement of 1969 they are paid an hour air rate for passing signals for a 2 or 3 man crew, an arbitrary that had formerly been paid only to yardmen for coupling air hoses.

The Carrier contends that Article III(e) of the 1972 agreement relied upon by the Organization must be read together with the same Article (f) thereby illustrating that use of the word crews is not confined necessarily to a full crew but may also refer to the work of an individual switchman. The Carrier argues that by the Organization's theory only the switchman and not the rest of the crew would be allowed the arbitrary of (f) for proceeding beyond the switching limits, a limitation that has not been followed in practice. The Carrier also points out that SBA 706 Award No. 69 relied upon by the Organization was for work performed in 1967, prior to the 1969 crew consist agreement and the 1972 local agreement. Finally, the Carrier has argued that the Organization has failed to meet its burden of proof

showing a violation of an agreement in the work performed by the claimant because switchtender-helpers' duties include that of yardwork and in the past that they have assisted tenant crews in yarding of trains without objection by the Organization.

#### FINDINGS

The Organization argued at the hearing before the Board and presented as an exhibit a PROPOSAL to be effective July 1, 1972 that included a provision that no penalty would apply for brief assistance to a tenant by a helper-switchtender to demonstrate the fact that the Carrier did not have the right to require the claimant to render the brief assistance provided in this case. There is no indication in the record nor was it stated at the hearing that this PROPOSAL had been agreed upon in any respect. Accordingly the Board must interpret the rules that have been set forth above under the heading of FACTS.

The Carrier has asserted that work such as performed by claimant in this case has been done in the past without objection from the Organization. On the other hand, there is nothing in the record to demonstrate proof of that assertion. The Board may be of the opinion but may not assume that this kind of work has been performed at sometime in the years intervening between 1972 and 1981 without objection from the Organization. Regardless of this possibility, the Organization may now assert this claim and require an interpretation of the rules.

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Following in logical sequence, the Board starts with the proposition that Rule 16(a) provides that switchtenders may perform the work that was done in this claim. Article III(e) of the 1972 agreement clearly provides that PTRR crews may assist tenant crews in yarding trains, handling transfer deliveries and picking up and setting out cars. This kind of work necessarily involves cuts of cars and therefore would permit the work performed by claimant in this case. Subdivision (f) of this Article and Section is somewhat ambiguous in use of the work "switchmen" going beyond yard limits after using the work "crews" in subdivision (e). If a switchman went beyond the yard limits and was entitled to an arbitrary for doing so would he be doing it as a member of a PTRR crew or by attaching himself to a tenant crew? Nothing in the agreements set forth in the record answers this question.

This is not a matter of burden of proof but a matter of interpretation of language. The Carrier is correct in stating, in the opinion of the Board, that switchtenders may do yardwork and that the performance of the work in this case was not beyond the scope of the claimant. Whether or not the claimant must be paid an additional day's pay for performing this work because he is not a PTRR crew is the question presented that apparently may be answered only by taking the words of the quoted agreements as they appear in the agreements. Accordingly, the Board is constrained to find that Article III(e) provides that only crews,

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not individuals, may assist tenant crews in the handling of their trains. The Board also finds that (f) of this Article is not a sequetur following (e) that would modify or explain the word "crews". Accordingly, the Board finds that there is no scope rule set forth in the record that would justify the use of the claimant for the work performed as an individual assignment to assist the tenant Carrier's crew. The PROPOSAL referred to above lends weight to this construction of the agreements.

AWARD

Claim Sustained - 30 day Order

DATED: *May 2,* 1983  
Portland, Oregon

*Irving T. Bergman*  
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IRVING T. BERGMAN, Neutral Member

*[Signature]*  
\_\_\_\_\_  
Organization Member

*[Signature]*  
\_\_\_\_\_  
Carrier Member