

PUBLIC LAW BOARD NO. 2487

AWARD NO. 45  
CASE NO. 53  
CARRIER'S FILE NO. E-550.1-89  
ORGANIZATION'S FILE NO. No File

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION  
(Enginemen's Committee)

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
-Eastern and Western Lines-

EMPLOYEES STATEMENT OF CLAIM:

Claim of Middle Division Engineer J.A. Salisbury dated June 17, 1975 for 100 miles account handling train not in connection with claimant's assignment.

FINDINGS: 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; and 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.

The Organization's facts state that a train designated as 1453-54 is a regular assigned local operating from Enid, Oklahoma to Kiowa, Kansas and return daily. During June and early July the wheat harvest requires an additional local operating over the same route at night designated as Train No. 1459-60. Claimant was regularly assigned to the night local (1459-60) when he reported for duty at 7:10 P.M. at Enid on June 17, 1975 and was taken by

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automobile to Blanton to operate the day train (1453-54) from Blanton back to Enid. After yarding the day train claimant was instructed to take his regular assignment from Enid to Kiowa and return. The claim that was filed initially was for the 6 miles deadhead plus 100 miles for performing service on a train not connected with his regular assignment. At first, the Carrier declined the claim for 100 miles but allowed 6 miles as a lapback because of operation over the assigned territory. Later, however, the Carrier reversed that position stating that claimant had been involved in two classes of service and should have been compensated according to Article 7(c) of the Engineers' Schedule. Consequently, the claimant had been overpaid for the 6 miles but the Carrier would not attempt to recover that money.

The Organization's position is that it has never been the practice on this property to permit a regular assigned local crew to operate into and out of their home terminal during the same tour of duty. It is argued that the Carrier does have the right to operate crews regularly assigned to road switcher service to operate into and out of home terminals. In this case that would not apply because the Road Switcher Agreement does not include local assignments. The Organization argued further that the More Than One Class Of Road Service Rule, Article 7(c) would not apply because an example given in this rule (C) does not involve combining road with yard service except under circumstances that are not present in this case. It is contended that since Enid is subject to the 1937 Switching Agreement, the claimant had performed yard service when yarding Train No. 1453-54 thereby performing both

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road service and yard service which is prohibited under Article 7(c). Contending further that the First Division has many times held both with and without referees that crews required to perform work not in connection with their own train would be entitled to a basic day's pay, the Organization has referred to First Division Award No. 686. In that case claimants picked up cars within the yard some of which went on their own train and some of which were destined for a different train thereby performing yard switching. In First Division Award No. 13013 a sustaining award held that assignments must be definite as to territory to be covered each day, the number of trips to be made out of the terminal and the time for the crew to start work. In that case the crew made a side trip during its assigned run. The Carrier denied the claim on the ground that the pertinent agreements provided for continuous time payment until the train was yarded at its final terminal; and that there was no provision for considering a run to have ended anywhere between terminals so that the additional run to the terminal would constitute another day's work. First Division Award No. 15691 sustained a claim referred to hostler assignments not involved in this case. In First Division Award No. 17058 the claimant set out his train and ran light to another station where he delivered his engine to the crew of a different train after which claimant deadheaded to a point where he picked up an engine, returned to his train and continued the assigned run. The sustaining award held that the parties agreed that on that property the continuity of the extra service performed was broken by the deadhead movement so that the two separate light engine movements

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were subject to separate payment. In PLB No. 1335 Award No. 18 the sustaining award followed a prior sustaining award on the same property when a relief crew was called to report at one point and was then transported to a different point to relieve a crew that had been overtaken by the Hours of Service Law. The Organization has also set forth a denial award of PLB No. 216 Award No. 6 to illustrate the principle that a road crew is not required to yard its train and is thereby not entitled to additional compensation when a yard crew switched the rear cars that extended beyond the length of the track on which the road crew had yarded the train.

The Carrier's version of the facts is somewhat different in that it is stated that the claimant was called from the extra board to protect an engineer vacancy on Train No. 1453-1454. Claimant was placed on duty at Enid on Train No. 1454 but before departing he was transported to Blanton a distance of three miles to relieve a crew on Train No. 1453 that was dead under the Hours of Service Law on the return trip from Kiowa. Claimant handled Train No. 1453 into Enid and then departed on his road trip to Kiowa where he went off duty. The distance between Enid and Kiowa is 63 miles. Claimant was paid the basic day for the trip from Enid to Kiowa plus final terminal delay at Kiowa and, in addition, the 6 miles for handling Train No. 1453 from Blanton back to Enid.

The Carrier's position is that it overpaid the claimant the 6 miles between Blanton and Enid because under the More Than One Class Of Road Service Rule (c), claimant was only entitled to not less than a basic day's pay at the highest rate applicable to

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any class of service performed. Since the trip was only 69 miles, claimant had been properly compensated. The Carrier supports its position by reference to PLB No. 250 Award No. 102 that denied a claim for an additional day in a case where a switching crew was required to relieve the crew of a different train and operate it into its terminal. It was held that continuous time for that service was appropriate under the More Than One Class Of Road Service Rule of the agreement between the parties. In SB of A No. 35 Decision No. 61 a claim was denied when a crew performing freight service was required during its run to operate a passenger train back to its terminal because of the Hours Of Service Law. It was held that the Two Classes Of Road Service Rule between the parties was applicable. In PLB No. 1324 Award No. 27, it was also held that a crew assigned to a run came under the Two Classes Of Service Rule when, prior to its run, the crew brought a train into the yard that was dead under the Hours Of Service Law.

It is the Board's opinion that the variation in the facts as set forth above by the Organization and the Carrier does not affect the issue of this case nor the result. The Organization's position is that the claimant had performed yard service in addition to the road service; that it has never been the practice on this property to permit regular assigned local crews to operate into and out of their home terminal during the same tour of duty that the Road Switcher Agreement did not apply to this situation and that the More Than One Class Of Road Service Rule, Article 7(c) did not apply because of the combining of road with yard service. The Carrier relies entirely upon the More Than One Class Of Service

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Rule, Article 7(c). The Board finds that under that Rule claimant had not performed service into and out of the terminal on different runs. The Board also finds that the Road Switcher Agreement does not apply to the facts of this case and that the claimant did not perform yard switching service when it relieved the crew that was dead under the Hours Of Service Law and brought that train into the terminal.

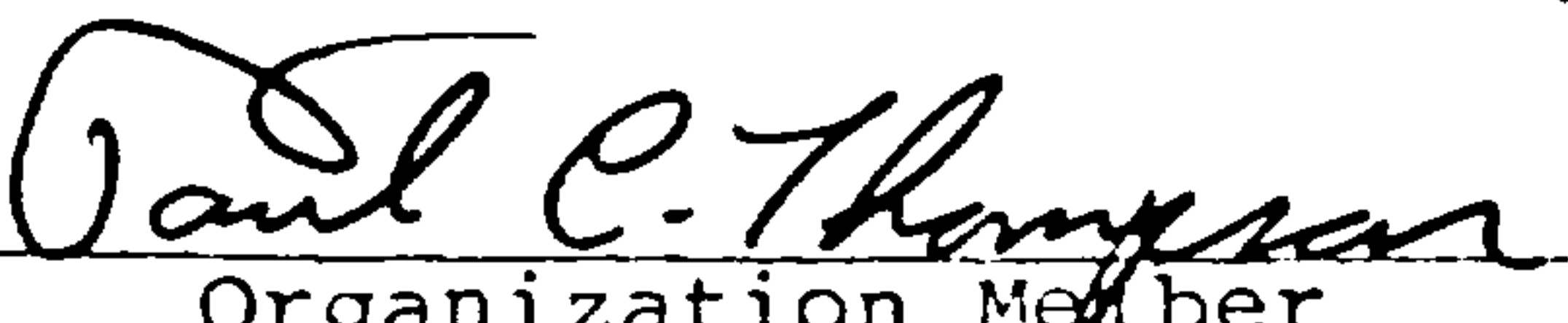
The Board distinguishes the Awards cited by the Organization in that no yard service was performed as in First Division Award No. 686; no side trip was made as in First Division Award No. 13013; considers the result in First Division Award No. 17058 to be predicated upon the absence of a rule between the parties in that case and the existence of the rule in this case. Neither the case involving hostlers nor the road engineer's claim for compensation when the yard crew properly switched cars in the train that had been yarded, are relevant to the present case. Claimant did not run in and out of the terminal with his own train when helper service was performed. The awards as set forth above that were referred to by the Carrier indicate that the More Than One Class Of Road Service would be applicable to this case.


A W A R D

Claim Denied

Dated: 1982  
Shawnee Mission, Kansas

  
IRVING T. BERGMAN, Neutral Member

  
Organization Member

  
Carrier Member