

PUBLIC LAW BOARD NO. 2387

Organization File: 1494-432-Y
Carrier File: Y-480.9-146

Case No. 6

PARTIES) United Transportation Union
) Conductors', Trainmen's & Yardmen's
TO) Committee
) and
DISPUTE) The Atchison, Topeka and Santa Fe Rail-
) way Company, Chicago Terminal Division

STATEMENT OF CLAIM:

Claim for one day's pay, at the appropriate rate, for the Chicago Terminal senior yardman who stood first-out at 10:25 a.m. on December 21, 1975.

STATEMENT OF CASE:

This claim is based on two grounds.

The first basis is that a yardmaster instructed a carman to pull a pin to uncouple cars and that the carman did so in accordance with that instruction, which work was reserved to yardmen. The second basis for the claim is the failure of the Carrier to comply with the agreement on processing claims.

On the merits, the essential case for the Organization is that instructions were given and the pin was pulled. The Carrier maintains the instructions were not given and the pin was not pulled by the carman.

The Carrier is correct that the Board is not a trier of facts and that the Organization has the burden to show that the Carrier violated the agreement.

In a close case and in consideration of the statements of all parties in the record, this Board is per-

sueded that the facts in the case are as alleged by the Organization.

In its initial filing of the claim, the Organization specified the time, place, circumstance and names of all parties to the incident, resulting in a carman pulling a coupling pin to make a cut on certain cars. The Organization also claimed this practice was "repetitive" as between the yardmaster and carmen.

In the first response by the Carrier, it denied the claim for reasons that: "Records indicate yardman was not instructed to pull pins in the yard by yardmaster". (emphasis added). (The reference by the Carrier to "yardman" was obviously in error, as it should have been "carman", but that error forms the basis for the Organization's argument that the claim should be sustained because of violation of procedure. Later, the Carrier corrected the error).

In a subsequent response, the Carrier advised the Organization that its investigation did not reveal that the yardmaster instructed the carman to pull the pin on the cut of cars or that the carman actually pulled the pin. In the hearing before the Board, the Carrier included as an exhibit to its submission an undated statement by Yardmaster Lindorff that:

"I do not instruct carmen to pull pins in this yard. If they do they do it on there (sic) own without me telling them."

Also, under date of April 27, 1976, the carman alleged to have improperly pulled the pin (Charles A. Race) in a statement included as another exhibit to the Carrier's submission, states:

"As to statement of Feb. 9, 1976
I did not pull pin on cut of cars
to make a pull for any eng."

Since the claimed offense was said to have occurred on December 21, 1975, the statement by Race referring to

February 9, 1976 leaves room for doubt that this carman actually denied pulling the pin in question at the time and place of which the Organization complains, particularly as the union has referred to the violations as being repetitive.

Yardmaster Lindorff's statement is even more unsettling.

It is not expected that a railroad yardmaster would write with the precision and clarity of a good lawyer but the yardmaster did not actually deny instructing the carman to pull the pin and the yardmaster's reference to carmen doing it "on their own" tends to support the specific complaint of the union that carmen were pulling pins to uncouple cars, particularly as yardman Phelps who was a witness to the incident on December 21, 1975 reported the events in considerable detail. The yardman reported, for example, (contemporaneously with the event) that the yardmaster used the yard speaker to communicate his instruction to carman Race and that the instruction was to pull the coupling pin to make a cut "on BRC Block Cars" on "Yard Track 215" which a transfer crew was preparing to handle on another track, and that he actually saw carman Race pulling the pin.

On the record, this Board is persuaded that the coupling pin was improperly pulled as alleged by the Organization.

The Organization is too rigid in its claim that the Carrier violated the agreement on processing claims.

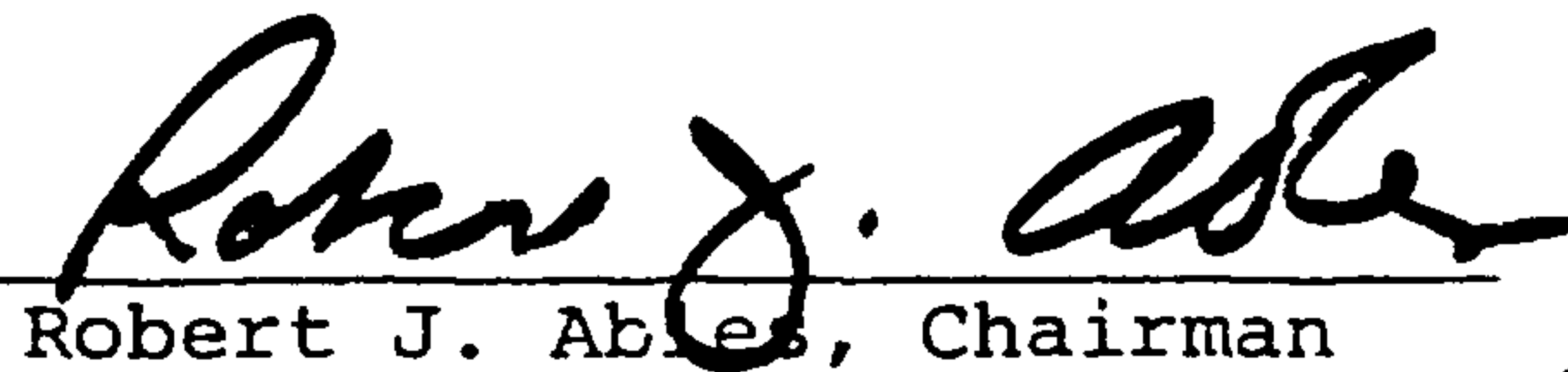
The Carrier responded within time limits and its advice to the union that the carman (the reference to yardman was an obvious, non-prejudicial error) was not instructed by the yardmaster to pull pins was a specific reason for denying the claim. That reason put directly in issue a question of fact which divided the parties. Accordingly, there is no valid basis for the claim by the Organization against the Carrier for having violated the agreement of July 10, 1975 "covering handling of time claims".

FINDINGS:

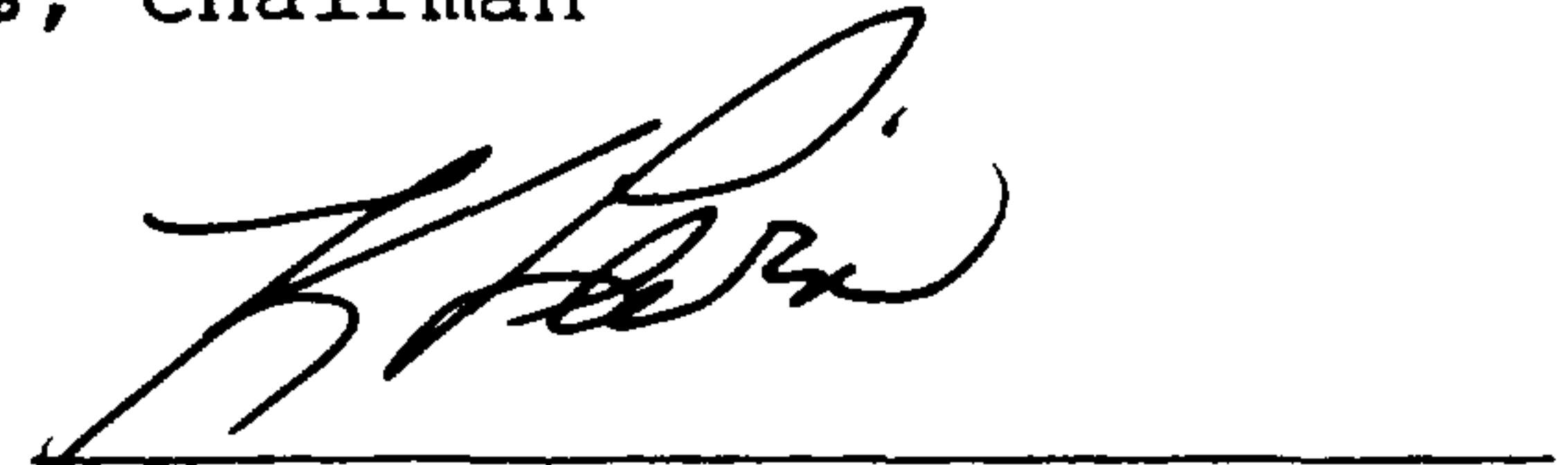
Upon the whole record and all the evidence, after hearing, the Board finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and of the subject matter and that the Carrier violated the agreement.

AWARD

The claim is sustained.


Robert J. Ables, Chairman


A. D. Dula, Carrier Member


Kenneth Levin, Union Member

Dated: January 30, 1980
Washington, D.C.