

PUBLIC LAW BOARD NO. 2487

AWARD NO. 64
CASE NO. 109
CARRIER'S FILE NO. E-550.1-106
ORGANIZATION'S FILE NO. 5-7-317-76

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION (E)

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
EASTERN LINES

EMPLOYEES STATEMENT OF CLAIM:

That Eastern Division Engineer L.S. King should be paid 100 miles for "dog catching" train 1212 E-1 on December 5, 1975 and 100 miles at the yard rate of pay plus 100 miles for "dog catching" train 1212 X-1 on December 24, 1975 in addition to his earnings while performing road switcher service on both of these dates.

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

Claimant was a regularly assigned road switcher engineer. On December 5, 1975, he went on duty at Argentine at 1:00 P.M., was instructed to take his engine unit to dog catch a train dead under the Hours of Service Law that was outside the yard switching

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limits. After yarding the train, claimant picked up his train and performed switching going off duty at 6:40 P.M. having run 12 miles and was paid 100 miles at the road switcher rate, highest rate for the day's work. The road switcher was assigned to perform service from Argentine MP 4.8 to Craig MP 19.5. The dog catch train was at MP 11.

On December 24, claimant went on duty at 1:00 P.M., took his engine consist to his train, was instructed to return the consist to the pit track from where he and his crew were deadheaded by auto to bring in a train at MP 12 that was dead under the Hours of Service Law. After yarding the train and uncoupling its units, claimant was taken by auto to his train, performing road switching until going off duty at 6:05 P.M., having run 12 miles. Claimant was paid 100 miles at the road switcher rate.

POSITIONS OF THE PARTIES

The Organization contends that only road switcher service may run in and out of and through the terminal. It argues that protecting other service such as handling the road trains into the terminal, as described above, is not provided for in road switcher service. Also that road switcher assignments do not include local service unless mutually agreed upon. Further, that the More Than One Class of Service rule does not permit combining road with yard service that was performed by yarding the trains. Contention is made that the MOCS Article includes provision for a trip in connection with own train thereby prohibiting more than one class of service performed by claimant that was not in his own

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train. In any event, that the service performed was outside of claimant's regular assignment.

The Carrier contends that the claimant was placed in a second class of road freight service when dog-catching, permissible under Article 7(c) of the Engineers Schedule, More Than One Class of Road Service Rule that states, in part, the following:

"(c) Road engineers employed in any class of road service may be required to perform two or more classes of road service in a day or trip---
A. Payment: (1)---, payment for the entire service shall be made at the highest rate applicable to any class of service performed,---"

The Carrier also contends that the February 26, 1974 Agreement (effective March 1, 1974) with the BLE on this property provides in (1) that a road switcher assignment may be established on a turnaround basis with a radius not exceeding 25 miles from the terminal of the assignment and, in (4) that an assigned road switcher may be run in, out of and through the regularly assigned terminal. Paragraph (3) provides that road switcher assignments under this agreement are limited to switching for the greater part of the tour. Note (1) under paragraph (3) excludes, among other categories "local or mixed service" from the term road switcher.

FINDINGS

The Carrier's submission refers to 3 claims; the first two for handling the dog catching service the third claim, for a yard day on December 24th, for handling engine consist from pit track to a point in the yard, return consist to pit track and engage in another class of road service. At the hearing, the Organization

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argued this and also argued automatic release each time claimant yarded the dog caught trains. The Carrier denied there is an automatic release rule on this property and argued in its submission that return to the pit track on his engine on December 24th was taxi service and not yard switching. The Organization's statement of the claim refers only to dog catching on December 5th and 24th and claims one yard day's pay for each date in addition to his earnings. The record does not include the time claim, the Organization's submission has no reference to automatic release and/or yard switching when the engine consist was returned to the pit track; nor was rule or agreement support demonstrated by the Organization. If these claims are accepted as part of this case, they must be denied.

On the facts of this case the Board finds that the claimant was in a class of road service i.e. road switcher. When instructed to dog catch, bring into the terminal and yard the train on both December 5th and 24th, claimant performed a class of road service permissible under Article 7(c) and was properly paid as provided in subdivision A. The Board also finds that the dog catching service performed on both claim dates was within the 25 mile radius of the terminal and that the greater part of the tour on each claim date was involved with road switcher duty, both as provided in the February 26, 1974 Agreement. In addition, Note (1) of paragraph (3) in that agreement is interpreted to provide that the term "road switcher" as used in the Agreement may not be used to describe or label the types of service listed in the note. That

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does not conflict with the fact that claimant in road switcher assignment properly termed as such may be used in a second class of road service during his tour of duty under MOCS rule.

It is not disputed that claimant in road switcher service may run in, out of and through his regularly assigned terminal without regard for completion of trips, paragraph (4) of February 26, 1974 Agreement. The dog catch service performed during the tour was not an additional service performed outside the assignment and was not the completion of claimant's tour of duty when the train was yarded.

AWARD

Claims Denied

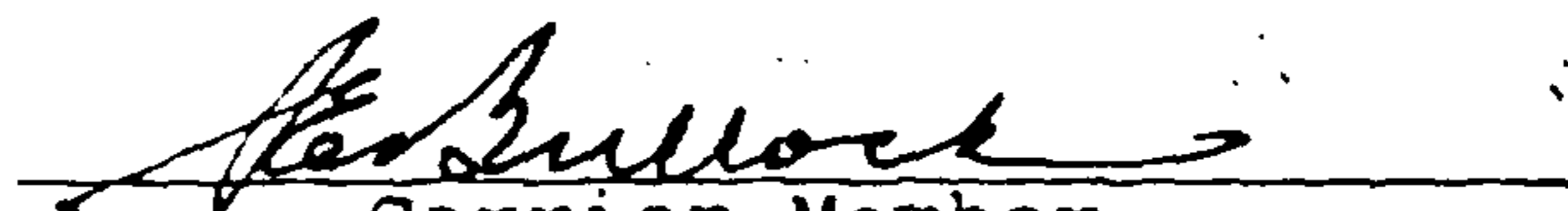
Dated: *April 20,* 1983
Shawnee Mission, Kansas



IRVING T. BERGMAN, Neutral Member



Organization Member



Carrier Member