

PUBLIC LAW BOARD NO. 4183

Raymond R. Hawkins
Chairman and Neutral Member

C. L. Little
Employee Member

R. P. Guidry
Carrier Member

Award No. 3
Cases No. 11, 12, 13 and 17

PARTIES TO DISPUTE:

United Transportation Union (E)

and

Southern Pacific Transportation Co.

STATEMENT OF CLAIM:

Case #11

Claim of Engineer E. L. Quicksall for 100 penalty miles May 9, 1985; claim of Engineer O. A. Garza, Fireman R. E. Jordan for 100 penalty miles, May 20, 1985; and claim of Engineer L. R. Martin for 100 penalty miles June 8, 1985 account required to operate locomotive not properly inspected.

Case #12

Claim of Engineer J. D. O'Brien for 100 penalty miles, May 6, 9, 12, 13, and 14, 1985. Claim of Engineer O. A. Garza for 100 penalty miles for May 21, 1985 and claim of Engineer R. D. Martin for 100 penalty miles May 16, 17, 26 and 27, 1985. Account required to service yard engine consist each date.

Case #13

Claim of Engineer L. R. Maldorado 5543 for 4 - 100 penalty miles, May 16, 20, 21, 31, 1985 account required to service supply engines.

Claim of Engineer A. S. Gutierrez for one-hundred (100) penalty miles each date. June 19, 21, 23, 24, 27, 28, 29 and July 29, 1985; claim of Engineer L. R. Martin for one-hundred (100) penalty miles, June 9, 1985; claim of Engineer R. P. Stickel for one-hundred (100) penalty miles June 16, 1985; claim of Engineer J. W. Zunker for one-hundred (100) penalty miles each date July 17 and 18, 1985; claim of Engineer C. B. Talley for one-hundred (100) penalty miles July 17, 1985.

FINDING OF FACT:

The Board finds that the employee and carrier are employee and carrier within the meaning of the Railway Labor Act, as amended and that the Board has jurisdiction of the disputes which follow; the parties filed ex parte submissions, and after due notice they participated in a hearing in Houston, Texas on January 19, 1987.

All claimants herein were in yard service at San Antonio, Texas (East Yard) Terminal at the time the disputes arose. The organization cites in support of its claims the following:

ARTICLE 28

Miscellaneous

Work on Engines. Necessary Tools

Sec. 1. The Company will not require engineers to do any more work on engines than is required to be done on other well regulated railroads similarly situated. It will be the duty of the engineers to see that engines are provided with necessary tools, etc., except tools under seals on engines in pooled service, before starting out on any trip.

Not Required to Handle Supplied
or Perform Certain Duties

Sec. 3. Engineers will not be required to set up wedges, fill grease cups or clean headlights, at points where competent roundhouse force is employed.

Neither will they be required to place on or remove tools or supplies from locomotives, fill lubricators, flange oilers, headlights, markers or other lamps at points where roundhouse force or an engine watchman is employed.

AGREEMENT OF NOVEMBER 6, 1970

Sec. 5. All locomotives will be equipped with a sanitary water cooler (mechanical or ice cooled), provided with a faucet, drinking cup dispensers and paper cups the year-round.

When starting a trip or day's work, water and, in the absence of a mechanical cooler, ice will be handled by other than engineers where persons other than engineers service, supply or make engines ready for service and other locations, engineers may at their own option, handle the ice and water which will be available to them.

MEDIATION AGREEMENT: TOILETS ON
LEAD UNIT - February 6, 1980

It is agreed single units or lead units of multiple unit diesel consists which are equipped with toilets from the mechanical facilities (diesel house) at El Paso, San Antonio, Houston, New Orleans (Avondale), Lafayette and Ennis.

If the toilet on the single unit or the lead unit is not in a sanitary and working condition as set out above, the engineer will not be required to operate locomotive. Discipline will not be issued to an engineer under such circumstances.

With reference to case no. 11 the carrier relies upon Article 31, Action 11, of the BLE agreement reading:

When engineers are required to inspect their engines and make work reports, they will be allowed ten (10) minutes at pro rata rate irrespective of other earnings of the trip in road service or day's work in yard service.

Case No. 11

The organization alleges the claimants were required and instructed to operate in yard service locomotives which had not been properly inspected in accordance with Federal Railroad Locomotive Safety Standards, particularly Part 229, sub-part 19, concerning cab windows, floors and passageways and that relating to containers for torpedoes and fuses.

The carrier asserts that the claims are vague, indefinite, and no rule or safety violations have been cited and nowhere in the agreement is a 100 mile penalty provided for an engineer inspecting his engine. It further maintains that if claimants did in fact inspect their engines, payment is provided in Article 31, above.

The jurisdiction of the Board is limited to determining whether the applicable collective bargaining agreement was violated. We are without legislative authority to enforce the rules of the Federal Railroad Administration which has its own enforcement procedures. Sec. PLB 602 Award 24, holding it had no jurisdiction to interpret a state law (a full crew act); Third Division Award 20289 finding it was without authority to determine alleged violations of the Interstate Commerce Commission's rules; and PLB 525 Award 26, holding it could not determine questions of violations of the Hours of Service Act.

As expressed in Second Division Award 1639, "the mere docketing of a case carries no guarantee that the Division has the necessary jurisdiction to adjudicate the merits of a case." In like manner, we hold the fact the case was placed on the list of claims to be heard by this Board does not preclude a finding that this Board lacks authority to pass on its merits. Therefore, Case 11 is hereby dismissed because we are unable to find sufficient evidence of an agreement violation; no claim was made under Article 31; and this Board lacks jurisdiction to rule on the regulations of the Federal Railroad Administration.

Cases 12, 13 and 17

These three cases differ from the foregoing case in that in addition to FRA regulations, the organization bases its position on rules of the collective bargaining agreement. Specifically it maintains the locomotives operated by the claimants were not supplied with ice, water, paper cups, paper towels and sufficient cleaning material as required by Article 28, Sections 1, 3 and 5; and mediation agreement dated February 6, 1980, both quoted above; letters of settlement dated April 21, 1976, pertaining to the drinking water; April 23, 1976 pertaining to toilets and prior awards. The rule, the settlement letter, and awards pertaining to toilets are immaterial here. Reference to FRA regulations is hereby disposed of for the same reason set forth in Case no. 11, above.

The organization states that prior to the claim dates above, carrier did have shop employees place cool water and supplies on yard locomotives at San Antonio. However, on or about April 1, 1986, the carrier furloughed a number of shop employees and the servicing to yard locomotive ceased, except when engines were taken to the shop facilities. Thereafter, the engine service employees were instructed to supply their cabs with ice and water and to clean them where needed. Because of insufficient supplies the cabs became unclean and unsanitary.

The carrier candidly admits, that because of force reduction of mechanical employees, it no longer supplies yard engines outside the confines of the roundhouse facilities. Nevertheless, the carrier asserts that Article 28, Section 5 is permissive and does not restrict carrier's prerogative to discontinue the service as done here.

The carrier maintains the 100 mile penalty miles claimed is not provided for in either the BLE or UTU(E) agreements. It further avers that since claimants acted upon their own volition, a penalty cannot be imposed on the carrier. Lastly, the carrier alleges that the May 19, 1986 BLE National Agreement makes the position of the organization moot.

The Board finds that the facts pertaining to the former and present methods of supplying and furnishing cold water and supplies to these yard engines as stated by the organization are supported by the record and they are hereby adopted.

The carrier's assertion that the claimants acted on their own volition is not correct. Volition requires an element of choice, and the record reveals the claimants did not have a choice here.

The carrier's argument pertaining to its prerogative is likewise not persuasive. Judge Carter in Second Division Award 1462 held:

At the outset, we point out that it was the prerogative of management to make any and all decisions in connection with the operation of the railroad prior to the advent of the collective agreement. This necessarily meant that carrier could employ or discharge whom it would for any reason that it cared to assert. The prerogatives of management are now limited by the agreement which it has made, leaving in the hands of management such authority as has not been eliminated or limited by contract.
(Emphasis added)

In this case we find rules applicable to the complaints herein, i.e., Article 28 Section 5 which requires:

"All locomotives will be equipped with a sanitary water coolers...

and in the second paragraph:

When starting a trip or day's work, water...will be handled by other than engineers where persons other than engineers service, supply or make engines ready...

This rule requires all locomotives, (it does not distinguish between yard and road,) be equipped with water where others service and supply locomotives. San Antonio is such a place and it continues to supply road engines at that point. The sole exception is "at other locations" and that exception does not apply at San Antonio. Under the facts in this particular case, the carrier cannot create an additional exception to the negotiated rule merely by furloughing employees.

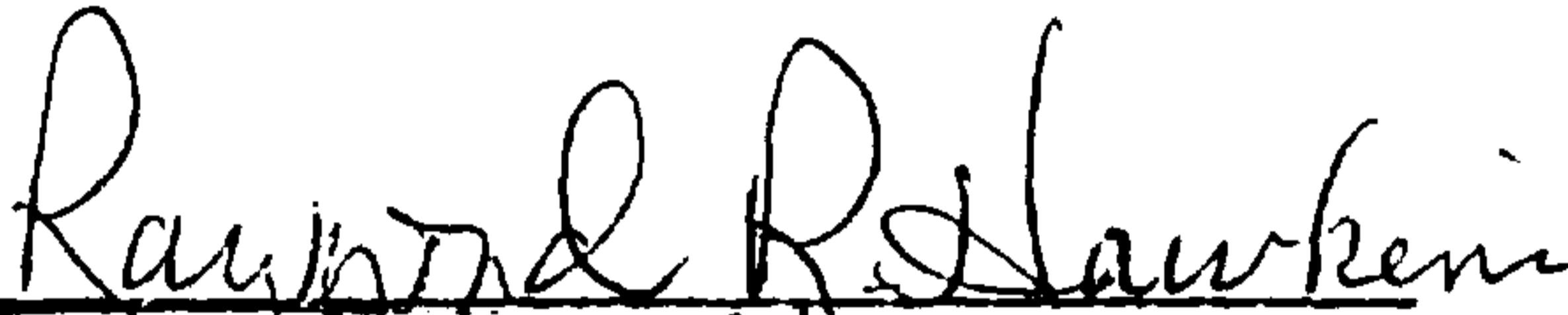
Carrier's allegation that this dispute is moot because of the National Agreement of 1986 is rejected in absence of a positive showing that the national agreement was intended to be retroactive to disputes such as these.

The carrier's position that no rule in the agreement provides for the 100 mile penalty claim for these yard service engine men deserves consideration.

There is a long history of disputes between the parties concerning the matters before us. There are several prior awards favorable to road service employees but none for yard service, nevertheless, these yard claimants are not subject to road rules, which include road rates.


The record supports the finding that claimants were required to perform work during their tour of yard duties which is over and beyond their agreement responsibilities. Even though the agreement does not specify a penalty, this Board does have authority to award special damages. Therefore, based on the facts in this case, and without creating a precedent in any other where the facts are not the same, the claims are hereby sustained in part. Accordingly, each claimant will be awarded special damages of one hour at the pro rata yard rate for each date he appears in the statement of claim. Other issues not specifically mentioned herein have been reviewed and found to be either immaterial or moot.

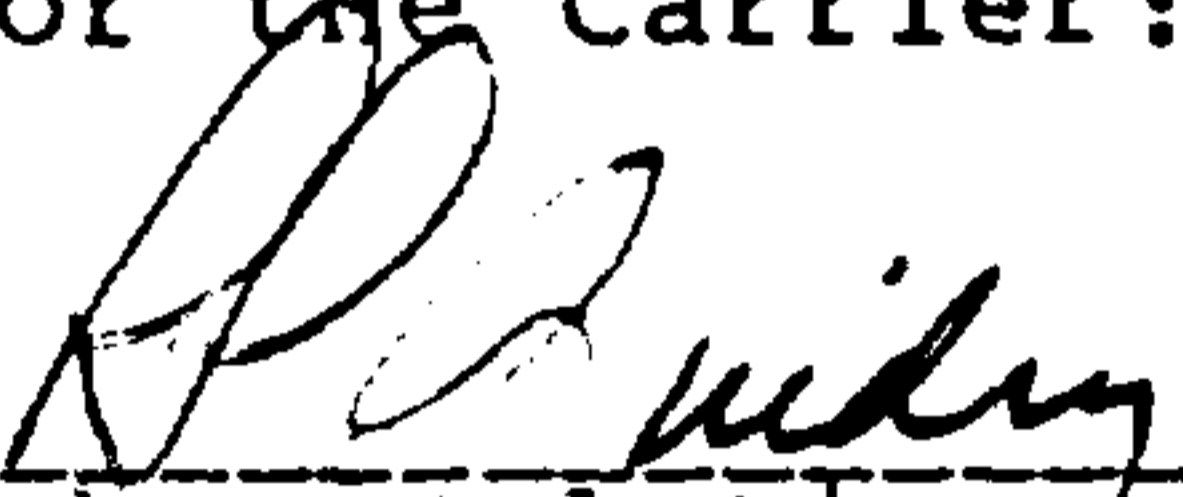
ORDER: Claim sustained in part. The award shall be implemented within sixty days from the date set forth below.


Raymond R. Hawkins
Chairman and Neutral Member

For the UTU(E)

For the Carrier:


International Vice President
DISSENT TO PAY


Labor Relations Officer
Dissemt

3/23/87
Date