

PUBLIC LAW BOARD NO. 4237

PARTIES) UNION PACIFIC RAILROAD COMPANY  
TO )  
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim is made for and on behalf of Yard Foreman S. E. Wacaster and Helpers F. E. Rouse and R. E. Paine for 47 days pay at the applicable pro rata rate on November 6, 1985 account carmen bleeding cars that the claimants subsequently switched.

FINDINGS: This Public Law Board No. 4237 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

FINDINGS: In this dispute the claimant yard foreman S. E. Wacaster and Helpers F. E. Rouse and R. E. Payne were regularly assigned to YM-04, a regular assignment working the East Lead from 7:00 a.m. to 3:00 p.m. On the claim date at approximately 11:00 a.m. Carrier instructed the claimants to switch 47 cars in Track 42. Carmen had been instructed to bleed off the 47 cars in this track.

The Union filed a claim for 47 days pay at the applicable pro rata rate on November 6, 1985 because carmen were bleeding cars which the claimants subsequently switched.

The Union relies upon a Memorandum of Agreement dated November 18, 1947 which established a yard foreman's job in the terminal and assigned to designated points at a rate of pay of \$10.54 per day. After the duties were enumerated, the Agreement stated: "This position is created with the understanding that the work required as above stated, is part and parcel of the duties of yardmen and will be subject to all the applicable rules of the current yardmen's agreement."

The Union also relies upon a letter from Chief Personnel Officer B. W. Smith to Union Chairman M. H. Austin wherein he stated: ". . . During the conference we pointed out to you that the bleeding or release of air on cars to be switched is part and parcel of the duties of yardmen as clearly provided in the provisions of the Yardmen's Agreement applicable to the Union Railway Company."

The Union also relies upon a letter from L. M. Elledge, Assistant General Manager, to Union Chairman M. H. Austin wherein he cites the November 18, 1947 Agreement and states:

"This Agreement has the effect of placing the bleeding of cars as the duty of a switchman, and in view of the fact that all cars that are bled are ultimately switched, we do not find the basis for the claims as specified due to the cars bled off not being switched by that particular crew."

The Union then cites a letter from J. E. Bernhardt, Superintendent, to the Yardmasters at Sargent Yard wherein he stated: ". . . To clarify bleeding agreement put out to each of you dated January 22, 1963, the following will apply: Item No. 1. Lead jobs will bleed cars that they will be expected to switch during their shift, but the relieving lead job may be allowed to switch cars bled by the previous lead job . . ."

The Union also cites Public Law Board No. 651 in Award No. 1 wherein the referee stated: "All First Division awards on other properties, which have been called to our attention, without exception, hold that bleeding cars during switching is the exclusive duty of yardmen; and the only First Division award which deals with the specific issue before us; the abolishment of long-established Utility Yardmen positions and the assignment to caremen of bleeding cars preparatory to switching, holds that such an abolishment is improper (Award No. 20038).

The Union has also cited letters from four long-service employees regarding the practice on the property. Those letters stated the past practice established that carmen did not bleed off cars which were to be switched.

The Carrier has submitted an extensive brief. Their basis contention is that the bleeding of air has never been the work of any particular craft of employee, and it is not a violation of yardmen's rights when other than yardmen bleed air from cars. The Carrier contends that the Agreement relied upon by the Union simply specifies the rate of pay for the yard foreman and establishes that yard crews may perform the work involved herein.

The Carrier contends that a third party jurisdictional dispute was involved. The Board agreed and issued a notice to the General Chairmen of the BRC of US&C. They chose not to appear but did make a brief statement that their right to perform work is protected by the controlling agreement in effect on the Carrier's property and that such right must be given due consideration by the Board in rendering its decision.

The Carrier contends that the claimants were improper since they were on duty and under pay. The Carrier contends that the proper claim, if the claim is valid, would be for the first out yardman rested and available on the extra board for service at 10:30 a.m. on November 6, 1985.

The Carrier cites First Division Award 19496 in support of that position, and several other awards, including Award No. 7 of

Public Law Board No. 2096 by distinguished referee Jacob Seidenberg wherein the Board held: "Preliminarily, the Board finds that the parties agree that all yardmen assigned to the extra board, properly rested, and standing first out, are proper claimants." The Board went on to find: "We find, that those claimant yardmen who were either regularly assigned and working on the shifts on which the alleged violations occurred, or regularly assigned yardmen who wanted to double, or regularly assigned yardmen on their specified rest days, cannot be subsumed under the category of a 'first out extra yard crew' within the purview of Yardmen's Schedule Rule 32(h)."

The Carrier then points up that the claim is for 47 days pay for each of three crew members as a result of carmen bleeding air from 47 cars in Track 42 in Memphis Yard. The Carrier contends that the only conceivable basis for 47 days pay is that it is the contention that the claimants should be allowed an eight hour penalty per car. The Carrier points up that one employee could have performed the service, and if the Carrier had been required to call out an employee from the extra board to perform the service of bleeding, only one yardman would have been called.

The Carrier points up that an agreement was made on April 7, 1963 and that Paragraph 1 therein states: "Yard crews in Sargent Yard consisting of a foreman and two helpers may bleed air only on the cars to be switched by that crew."

The Carrier contends that on or about November 1, 1985 the Carrier's operating officers at Memphis, Tennessee assigned the primary responsibility of bleeding air to members of the carmen's craft.

The Carrier contends that from 1930 to 1947 the agreement was silent regarding the performance of bleeding air and that yardmen did not exclusively bleed air during that period of time.

The Carrier disagrees that the Agreement of November 18, 1947 granted exclusivity to yardmen. The Carrier contends that the language was placed in the agreement to preclude any contention on the part of the occupants of such position that they could not properly be required to perform one or more of the duties set forth in the agreement.

The Carrier introduced statements by operating officers involved in the operation of the terminal prior to and subsequent to the 1979 abolishment of the last "marker-bleeder" assignment. Those officers stated that their instructions were that the bleeding of cars be shared between the carmen and the yardmen at Memphis.

The Board has reviewed all the contentions of both parties. The Board has also studied the awards cited by the parties, and the letters and other evidence submitted by the parties have been considered.


Item No. 1 of the April 7, 1963 Agreement states that yardmen on lead jobs at Sargent Yard may bleed any cars in Sargent Yard that are to be switched. This is considerably different from the wording of the November 18, 1947 Agreement.

If the 1947 Agreement intended that yardmen could be required to perform the duties listed above in the Agreement, they should have said so. They did not. Instead they stated that the work required as above stated is part and parcel of the duties of yardmen and will be subject to all the applicable rules of the yardmen's agreement.

After reviewing all of the evidence, it is the opinion of the Board that the bleeding of cars to be switched by a yard crew is work that belongs exclusively to yardmen. The Board is not making any ruling that all bleeding is exclusive work to yardmen. Herein it is the opinion of the Board that the claimant crew is not entitled to one day's pay, and the pay for 47 days pay is ridiculous. The first out yardman was entitled to one day's pay. The claim for Switch Foreman S. C. Wacaster and Helpers R. E. Parne and F. E. Rouse are denied because they were not the proper claimants.

AWARD: Claim disposed of as per above.

  
Preston J. Moore, Chairman

  
Union Member **DISSENT TO  
PAY ISSUE**

  
Carrier Member

5-4-87

FRED A. HARDIN  
International President

T. R. BRYANT  
Assistant President

THOMAS J. McGUIRE  
General Secretary and Treasurer

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**Charles Little - Vice President • 107 Hemmingway Lane • St. Charles, MO 63303 • Phone 314-441-8187**

May 11, 1987

Mr. Preston J. Moore  
6315 Avalon Lane  
Oklahoma City, Oklahoma 73118

RE: Request for Interpretation  
Award 1 Public Law Board 4237

Dear Sir:

With respect to the above reference, the Findings of the Board states in part:

"...it is the opinion of the Board that the claimant crew is not entitled to one days pay, and the pay for 47 days pay is ridiculous. The first out yardman was entitled to one days pay. The claim for Switch Foreman Wacaster and Helpers R. E. Paine and F. E. Rouse are denied because they were not the proper claimants.  
AWARD: Claim disposed of as per above."

Under the Findings of the Board, it is the Organization's position that quite naturally the claim for 47 days is denied and the claim for the regular crew is denied, however, the first out yardman on the date of claim will be paid the one days pay as a result of the violation.

Please advise if the Organization's position is proper interpretation consistent with the Findings of the Board.

Yours truly,

C. L. Little  
Vice President

cc: A. C. Hallberg  
M. B. Futhey, Jr.

UNION PACIFIC RAILROAD COMPANY

A. C. HALLBERG  
REGIONAL DIRECTOR



R. P. MITCHELL  
ASST. REGIONAL DIRECTOR  
M. A. HARTMAN  
ASST. REGIONAL DIRECTOR  
W. E. NARO  
ASST. REGIONAL DIRECTOR

CENTRAL REGION-LABOR RELATIONS DEPARTMENT  
2801 ROCKCREEK PARKWAY  
NORTH KANSAS CITY, MISSOURI 64117  
(816) 245-2780

May 18, 1987

File: 170.60-18

Mr. Preston J. Moore  
Arbitrator  
6315 Avalon Lane  
Oklahoma City, OK 73118

Dear Sir:

This has reference to Mr. C. L. Little's letter of May 11, 1987, requesting an interpretation of Award 1 of Public Law Board No. 4237.

Carrier addressed the issue of proper claimants on pages 6 through 8 of its brief and acknowledged therein that even if the Agreement was violated, the claim would lie to the first out yardman on the extra board. The Organization has named specific claimants in this case. They have not named or even referred to the first out yardman. The only claim before this Board is for the crew which was on duty and under pay. That claim was denied.

The Organization's request for an interpretation is an attempt to secure payment in behalf of an unnamed person who was not even a claimant in the case. A claim in behalf of a first out extra man was not before the Board. Carrier believe the Board's findings that:

" . . . The first out yardman was entitled to one day's pay."

was intended to merely point out who the proper claimant should have been, not to direct the Carrier to award pay thereto.

Carrier respectfully requests the Board to hold the Organization's position to be erroneous and improper.

Yours truly,

  
A. C. HALLBERG

 cc: Mr. C. L. Little

MH/J4/C

PRESTON J. MOORE  
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May 20, 1987

Mr. Charles Little  
Vice President, UTU  
107 Hemmingway  
St. Charles, Mo. 63303

Mr. A. C. Hallberg  
Union Pacific Railroad Co.  
2801 Rockcreek Parkway  
North Kansas City, Mo. 64117

Gentlemen:

Re: Public Law Board No. 4237 - Award No. 1

In response to Mr. Little's request of May 11 regarding the captioned award, this is to advise that this Board does not have the authority to substitute a claimant. This would constitute a change in the claim and present a different defense for the Carrier.

Sincerely yours,



Preston J. Moore nm

PJM: nm