

PUBLIC LAW BOARD NO. 3054

PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) TOLEDO, PEORIA & WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Engine Foreman L.W. Murphy and Brakemen D.A. Younglove and R.C. Rodecker claim 100 miles on February 15, 1980 account sweeping switches as instructed by yardmaster. Yardmaster had clerk bring a broom down and also said there were no section men available."

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

In its ex parte submission to the Board the Organization states, in part, the following:

"It is the position of the Organization that sweeping switches per say [sic] is by no means reason for a penalty claim. However, in the instant case, the Organization feels it can show this case to be a special one. In the investigation of the claim, I as General Chairman went to the Foreman of the East Peoria Section the following day and asked, 'Why there were no section men available to help the claimant crew?' The answer was because none were working. I then asked if any had been called and he said, 'No!' My final question was if no one was called, was there a reason such as exhaustion, requesting no call or being ordered by a superior not to be used. His answer, 'There was no

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reason they were rested and would have worked if the Yardmaster had called.'

The preceding is the principle reason for pursuing Foreman Murphy's claim."

Disputing the Organization assertion that section men were not rested and would have worked if called, Carrier offers probative evidence substantiating its position that its section force had been called out for snow duty commencing at 4:00 a.m., February 14, 1980, and had worked almost continuous time until 11:00 p.m., February 15, 1980, the latter being the date of the claim before us.

The Carrier states this issue is not new on this property. It directs particular attention to Award No. 37 of Special Board of Adjustment No. 37 (Referee David R. Douglass), where, in a somewhat like dispute on the property, it was held:

"The only switches cleaned and swept were those used by claimants in connection with their movements in pursuit of their assignments. Claimants were not required to sweep snow from switches not used by them.

The Carrier uses maintenance of way men to clean and sweep switches to the extent of their availability. Furthermore, no rule has been cited to lend support to these claims.

A long line of awards has held that, in the absence of a rule of prohibition, under similar circumstances, the work is considered to be an incidental duty."

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In the instant dispute, as in the above Award, there is no showing Claimants were instructed to sweep or clean snow from other than those switches needed for their own use in performing switching services at two warehouses in one of the industrial spur areas of East Peoria Yard. And, although Claimants' assignment went on duty at 11:45 p.m., or 45 minutes after the section force was released for rest, we find it difficult to comprehend, absent corroborating documentation, how one could maintain they were rested and available for call for additional work at that time.

On the basis of the foregoing circumstances of record, the Board finds no support for the instant claim and it will be denied.

AWARD:

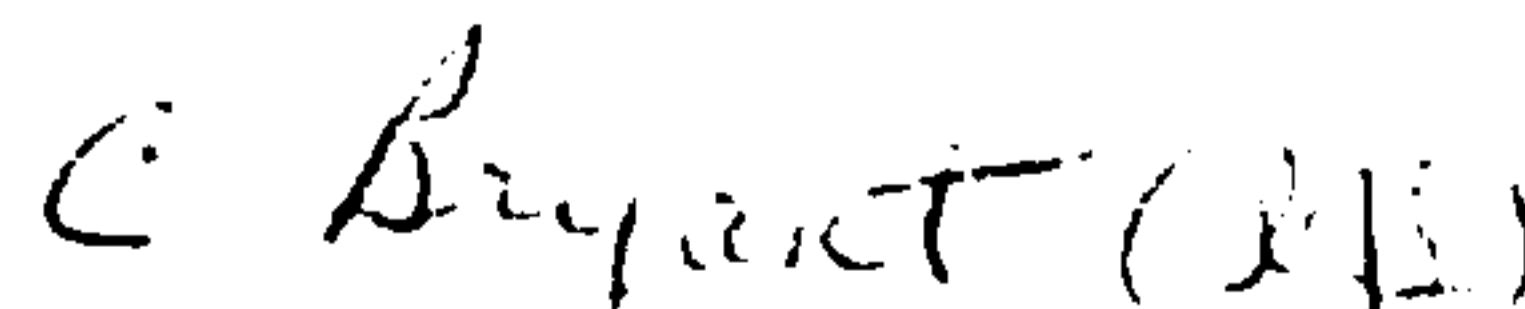
Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



D. H. Hise, Carrier Member



C. Bryant, Organization Member

Chicago, Illinois
April 2, 1984

