

PUBLIC LAW BOARD NO. 3054

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

STATEMENT OF CLAIM:

"Engineer R.L. McAvoy, Conductor H.G. Jefford, Brakemen R.F. Lee and D.L. Pearcefull claim 100 miles for Honegger using equipment to move cars on the west side of Honegger-past derail to clear main line on TP&W lead track on January 21, 1981."

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.

As set forth in the record, Honegger is an industry located on Carrier's main line and is served by both the Carrier and the Norfolk & Western Railroad. A derail indicates the end of side tracks on which Honegger is restricted from operating in the movement of cars with its own equipment.

The instant claim arose when the Claimants, working an assigned local train from Effner to East Peoria, upon arrival at Honegger, observed that a car had been placed on the Carrier's side of the derail. Thereafter, the Claimants submitted the above

-2-

penalty time claim, maintaining that since they had not performed the service of moving the car at the industry, Honegger had apparently used its own equipment to move the car past the derail. Upon receipt of the claim, Carrier inquired of its Agent and the Plant Manager of Honegger as to any knowledge they might have of the matter. While the Plant Manager advised that his supervisory people told him that they did not move any cars between the derail and the main line, Carrier's Agent responded to the inquiry in the following manner:

"My yard check at Honegger for 7 am 1/20/81 shows 3 mty ch's for the West belonging to TPW.

Honegger had a grain train on N&W. My records show it arriving 3 am 1/21/81. My instructions to Honegger and the N&W train crew was if the three TPW cars were still here to shove West so the next TPW local could take out. I don't know whether the N&W crew or Honegger shoved them west of the derail on No. 2 LEAD.

The first set up of the 100 car unit train was 34 cars, that was 24 on No. 2 & 3 track with 10 on west end of passing track.

I think with only 3 cars they could have been way west on No. 2 track and East of derail and still not been in the way of loading unit grain train."

We think it apparent from the above statement by the Agent that in keeping with instructions issued to both Honegger and the N&W Railroad, that one or the other most likely moved the cars. We do not find this to be a situation, as Carrier infers, that

-3-

since the Claimants or the Organization are not able to substantiate or prove actual movement had been made by certain persons or an industry that any claim must be denied. We believe the record speaks for itself, particularly when viewed in the light of unrefuted statements by the Organization that when Honegger had been confronted with a similar finding in December 1979, they denied moving anything anywhere, but since this denial was contrary to the then statements of the Carrier's Agent, who verified the then charge of an improper movement, the Carrier allowed the claim. We think a somewhat similar circumstance exists here, although the Agent's statement is perhaps not as certain as to who moved the cars as between Honegger or the N&W. Further, we believe it was incumbent upon the Carrier, upon being alerted by the Agent that the possibility existed that an N&W crew may have moved the cars, to have made inquiry of that Railroad to determine if in fact one of its crews had purposefully or inadvertently moved one of the cars of the derail.


Under the circumstances of record, the claim will be sustained.

AWARD:


Claim sustained.

ORDER:

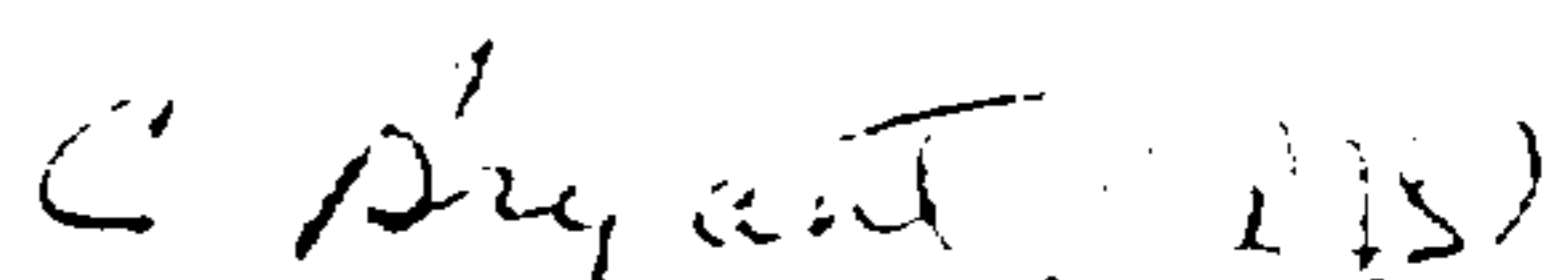
The Carrier is directed to make this Award effective within thirty days of the date set forth below.



Robert E. Peterson, Chairman
and Neutral Member



D. H. Hise, Carrier Member
Chicago, Illinois
April 2, 1984



C. Bryant, Organization Member