

PUBLIC LAW BOARD 3869

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

Case No. 57

-and-

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM

Claim is made for and in behalf of Yard Foreman W. Harris and Yard Helpers A.J. Haney and D.L. Burton for eight (8) hours at the applicable punitive rate in addition to any and all other earnings on November 24, 1983.

OPINION OF THE BOARD

The Claimants were assigned to job 103 with hours of 6:30 A.M. to 2:30 P.M. On Thanksgiving Day of 1983, the Claimant's assignment was blanked because of the holiday and they received eight (8) hours of compensation for the day.

Another job (303) was also bulletined at the Settegast/PTRA Transfer on duty at the same south yard with assigned hours of 10:30 P.M. to 6:30 A.M. Job 303 worked its regular tour on November 23, 1983 and at approximately 6:40 A.M. on the 24th, the crew of job 303 completed a movement of 43 cars for PTRA lasting until approximately 8:35 A.M.

The Organization asserts that the Carrier has violated the rights of the crew of job 103. It recognizes a Memorandum of Agreement which specifies that the Carrier may utilize an additional assignment not to exceed one (1) hour within the designated work limits of assignments that are blanked on the holiday.

That Agreement states that service not to exceed one (1) hour will not constitute job swapping.

The Carrier asserts that the work that was performed by job 303 was not exclusively reserved to the Claimants but was work that was contained in the bulletin of job 303. In its presentation to this Board, the Carrier argues that the Claimants do not have the exclusive right to perform all work prescribed as PTRAs transfer work but rather other assignments that are bulletined to handle this work have the right to perform the transfer if the Carrier elects to have the work done on an overtime basis.

The Carrier argues that had this incident arisen on a normal work day, the crew of 303 would have completed the transfer on overtime while the Claimants performed service outside of their bulletin and they cite an award as authority for that proposition. Concerning the "one (1) hour" memorandum, the Carrier argues that it refers to an "additional assignment" which is an assignment that is not bulletined to perform the work in question and it asserts that such is not the case here.

It must be borne in mind that this case does not deal with exclusivity of job performance, violation of scope rule, etc. Rather, it deals with a rather limited situation of blanking work on a holiday.

As this Board understands the record, the Employees were scheduled to work on Thanksgiving Day of 1983 and had they done so would have been compensated in accordance with

the agreement. To be sure, the Carrier has the right to blank the position. When it does so, it ultimately agrees that the work to be performed by the holders of the positions blanked will not be performed by other individuals. Article XXIII, Section II(a) states that the Company will not abolish a job assignment that is scheduled to work the holiday for the sole purpose of avoiding the holiday pay, but the Company reserves the right to blank a job on the holiday and pay the crew on the assignment a day at the pro-rata rate.

We think that the claim is further enhanced by the Memorandum of Agreement which states that the Carrier may utilize an additional assignment not to exceed one (1) hour within the designated working limits of assignment that are blanked on the holiday not to exceed one (1) hour. Once again, in that Memorandum, it is repeated that the Company will not abolish a job assignment for the purpose of evading holiday pay.

Under the record before us, we are of the view that the Carrier violated the Agreement when it blanked job 103 and when permitted job 303 to perform work beyond the one (1) hour limitation. We will sustain the Claim.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

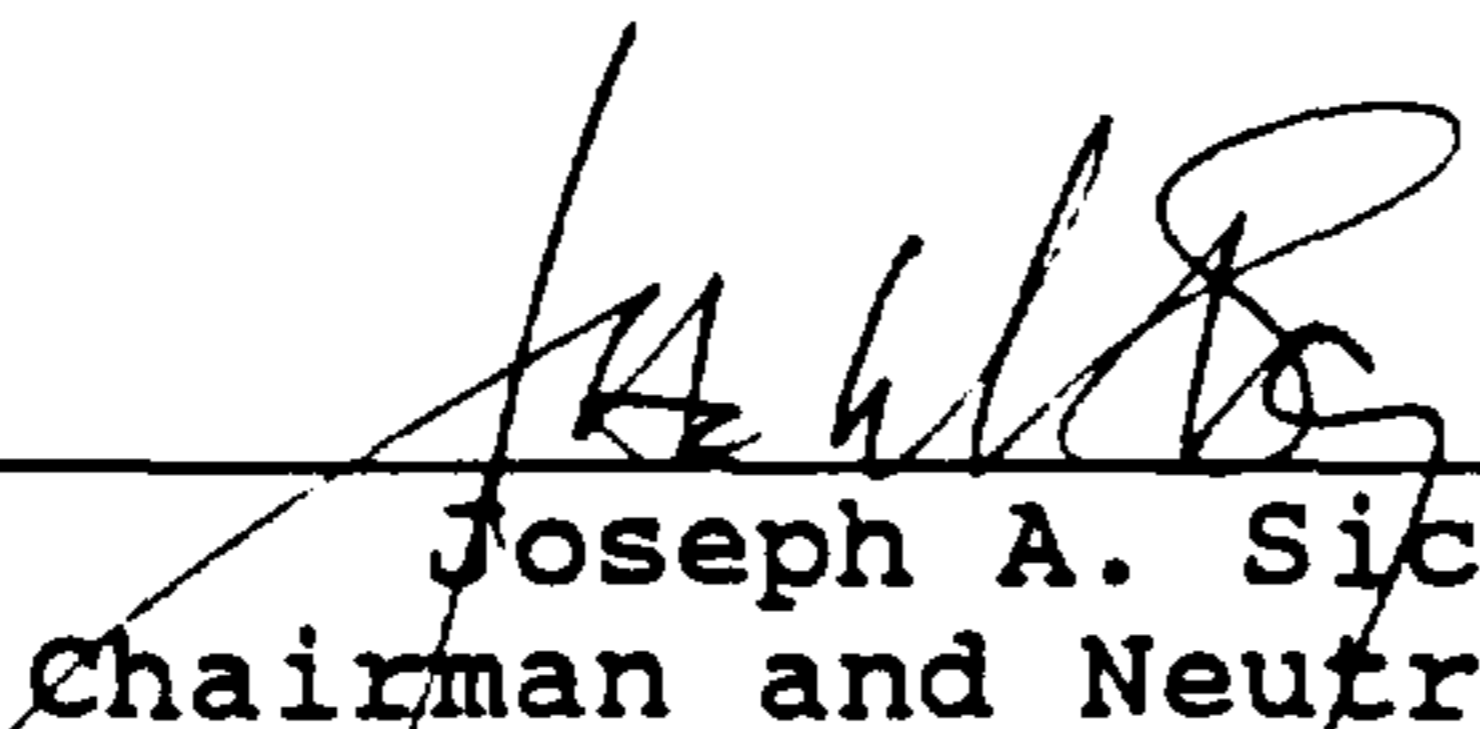
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Claim sustained.
2. Carrier shall comply with the Award within thirty days of the effective date.

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
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T.M. Stone  
Carrier Member

  
\_\_\_\_\_  
C.L. Little  
Organization Member

7-23-87  
Date