

AWARD NO. 97  
CASE NO. 97  
UTU IGN-R-8-2-81  
MP 282-2136

PUBLIC LAW BOARD NO. 1900

Parties to Dispute: UNITED TRANSPORTATION UNION (C&T)  
and  
MISSOURI PACIFIC RAILROAD COMPANY

Statement of Claim: Claim of Conductor D. G. Kestler and crew for 100 miles October 21, 1981, account assisting a disabled train.

FINDINGS: The facts as stated by the Organization and by the Carrier are not materially different. In the early handling of this claim, the Superintendent and the Local Chairman, in a joint statement, agreed that the facts were as follows:

"On 10/21/81, Conductor D. G. Kestler and crew were on train CHZ 20, engine 3521. They were required to stop at Queen City, mp 21, on the Dallas Sub at 6:05 p.m. to cut their locomotives off and go west to MP 24 and set out bad order draw bar car out of Local 933. They departed Queen City at 6:05, arriving MP 24 at 6:15, departure at 6:25, returning to MP 21, at 6:30. Total delay of 25 minutes. Total miles was 6."

The Organization bases the claim on Mr. Short's letter of February 11, 1952, which was accepted by the General Chairmen of BLE, BLF&E, ORC and BRT. They cite Award No. 44 of this Board and Award No. 21910 of the First Division of the National Railroad Adjustment Board in support of the claim.

Mr. Short's letter was written, and accepted by the Organizations, some six months after the Cheney award (on coupling air and more than one class of road service) became effective, and prior to rendition of any decisions by the Disputes Committee established pursuant to Arbitrator Cheney's award. The next to last paragraph of Mr. Short's letter reads as follows:

"All of the foregoing must be understood to be without prejudice to the position of either party in connection with the applicability or non-applicability of any of the provisions of the Decision and Award of Referee Geo. Cheney, dated August 1, 1951, and effective September 1, 1951."

The Findings in Award No. 44 of this Board, to wit:

"FINDINGS: Based entirely upon Mr. Short's letter as above set forth and without further reference into the facts or law of this case, the Board is of the opinion and finds the claims of Conductor Roy Stone and crew set out above are thereby supported."

were the result of mutual consent of the parties, and went to no consideration of anything subsequent to the date of that letter. In the case at hand, no such consent exists and this Board must and does consider all precedent and other evidence submitted by the parties.

First Division Award No. 21910 covers a claim for a lap back and was argued by both parties thereto under the Lap Back Rule of the Agreement involved in that case. One party argued that Paragraph (a) of the rule applied, while the other argued that Paragraph (e) of the same rule applied. Neither party mentioned the Cheney and/or Guthrie awards.

Some four years after the Cheney award was rendered the Disputes Committee established thereunder rendered a decision in a dispute that was designated as Case No. 35-W. The Committee's decision reads as follows:

"STATEMENT OF CLAIM: Does the rule of the Arbitration Award of August 1, 1951, commonly known as the Cheney Award, apply to brakemen who during the course of their unassigned pool freight revenue service trip perform a short turnaround trip (4 miles) in pushing a stalled passenger train for two miles up a hill? If the Cheney Award is applicable to brakemen under such circumstances should they be paid for the entire service (the revenue freight service trip and the pusher-helper service) at the highest rate applicable to any class of service performed or should they be paid an additional minimum day for the short turnaround trip they made in performing the pusher-helper service?

"FINDINGS: Claimants, in unassigned pool freight service, Savanna to Bensonville, 124 miles, on arrival at Hampshire, an intermediate point on their run, were required to cut off their engine and push stalled passenger train to a point 2 miles east of Hampshire, then returned light to Hampshire. This service required 30", after which they recoupled to their train and continued their trip. They were on duty 15'05", including the 30" in helper service and were paid at the highest rate applicable to any class of service performed. Claim is for an additional 100 miles at through freight rate for the 4-mile turnaround trip pushing the stalled passenger train.

"DECISION: The record is clear that the issue to be decided involves a combination of unassigned revenue freight service and unassigned pusher helper service. The Cheney Award has application to such a combination even though the pusher helper service was performed in other than agreed upon pusher helper territory. Under the circumstances, and the rules relied upon in this case, the claimants were properly compensated at the highest rate applicable to any class of service performed, in view of which this claim is denied."

On November 20, 1963, the Disputes Committee decided Case BRT-84-W as follows:

"STATEMENT OF CLAIM: Claim of Conductor P. D. Johnson and Brakemen J. W. Strawhorn and F. H. Benishek, Iowa Division (East Subdivision) for an additional 100 miles at way freight rate for service performed outside that of their assignment on May 28, 1959.

"FINDINGS: This is the first of three claims (the others are BRT-91-W and BRT-92-W) involving requests by employees in freight service for an extra day's pay. On May 28, 1959 claimants were assigned to through freight train on No. 124 (Des Moines-Clinton, Iowa). At Norway, a point en route, they were required to leave this train, operate their locomotive to Fairfax (6.7 miles distant), and couple to the rear end of another freight train (No. 254) which had suffered the derailment of a car. Claimants pulled the rear of Train No. 54 through the crossovers on the westbound track at Norway, thus permitting 254's locomotive to return to Norway on the westbound main line, couple onto the rear end of Train No. 124, and return eastward over the westbound main line to pick up the head end. Claimants received the way freight rate for the entire trip (the higher rate).

"Since this Committee has no jurisdiction over conductors' claims, the decision here will be confined to the two brakemen's claims. The Organization maintains that claimants performed another assignment on May 20, 1959 in addition to their regular freight service. Accordingly, under Rule 43 they are entitled to extra pay ('Trainmen on assigned runs will receive additional compensation for all mileage made outside of their runs on not less than a minimum day basis...'). However, in our judgment the disputed work performed by these men was helper service as defined in First Division Awards involving similar situations (Awards 16044, 15486, 17080 and others). Thus, under the Cheney Award, claimants were properly compensated (for performing more than one type of service) at the highest applicable rate."

On June 6, 1974, the Committee decided Case BRT-87-E as follows:

"STATEMENT OF CLAIM: Claim of Conductor B. B. Sherman, Brakemen B. D. Martz and W. A. Green for one additional day January 7, 1968.

"FINDINGS: On January 7, 1968, Brakemen B. D. Martz and W. A. Green were in through freight service and were called at Johnstown, Pa. for Johnstown 96, Engine 4512, at 9:00 P.M. At Rockwood, Pa., the crew was instructed to cut off their engine and proceed to Garrett, Pa. and assist Johnstown 97 from that point to Fogle Jct., 2 miles west of Rockwood. The claimant brakemen were required to spend 56 minutes performing this other class of road service, within their assignment territory.

"The More Than One Class of Road Service rule as set forth in the Cheney Award dated August 1, 1951 (stemming from Article 9 of the May 25, 1951 BRT Agreement) supersedes the 1949 settlement, as referred to in the submissions of the parties to this dispute, which was made with the employees in connection with disputes of the nature here involved. As clearly shown in the employees' submission, the former trainmen's organization accepted the 1949 settlement and was allowed claims thereunder. In the circumstances, the Committee does not agree this organization can now disassociate itself from the decisions rendered in disposition of Cases ORC&B-1-E and ORC&B-2-E by the Committee created pursuant to the agreed-upon procedure to be followed in disposing of disputes arising under the More Than One Class of Road Service Arbitration Award of December 3, 1952.

"The movement involved in this dispute comes within the coverage of Referee Cheney's award covering More Than One Class of Road Service and the claimant performed a combination of through freight service and helper service. The claimant brakemen were entitled to and were paid for both services performed on a continuous time basis at the highest rate applicable to any class of service performed."

Similar cases were decided in Cases 36-W, BRT-85-W, BRT-88-W, BRT-91-W, BRT-92-W, BRT-94-W, BRT-112-W, and BRT-88-E.

The Disputes Committee established pursuant to the Guthrie Award covering Conductors, Engineers, and Firemen rendered the following decisions in 1958:

"Case ORC&B-5-W

DECISION OF COMMITTEE  
CREATED BY AGREED-TO PROCEDURE DATED SEPTEMBER 2, 1953 UPON  
DISPUTES ARISING UNDER THE MORE THAN ONE CLASS OF ROAD  
SERVICE ARBITRATION AWARD DATED DECEMBER 3, 1952  
INVOLVING RAILROADS REPRESENTED BY THE  
EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES  
AND THE EMPLOYEES OF SUCH RAILROADS REPRESENTED BY THE  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN  
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

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Chicago, Illinois - April 23, 1958

Parties to  
Dispute: Order of Railway Conductors and Brakemen  
and  
Chicago, Burlington and Quincy Railroad

Statement of Claim: Claim of Conductor J. J. Harrington, Omaha Division, for payment of 2 hours in lieu of actual time allowed when required to cut off engine and shove X-5614 over Platts-mouth Hill, June 7, 1955, based on the provisions of April 13, 1949 Agreement captioned "Helping Other Trains."

FINDINGS: Claimant, in through freight service, was instructed to cut his locomotive off and help X-5614 East over Platts-mouth Hill, spending 45 minutes in this service, which was paid for under paragraph I-A-2 of the awarded rule. Employees contend claimant is entitled to two hours under "Helping Other Trains" provision of agreement of April 13, 1949. Carrier contends that rule was superseded by the awarded rule. Claimant performed a combination of through freight and helper services coming under the provisions of paragraph I-A-2 of the awarded rule, which rule supersedes and abrogates that portion of the Agreement of April 13, 1949 pertaining to "Helping Other Trains."

DECISION: Claim denied.

EMPLOYEE MEMBERS

(signed) R. E. Davidson  
S. C. Phillips  
J. A. Paddock

CARRIER MEMBERS

(signed) Frank J. Goebel  
E. H. Hallmann  
W. S. Baker"

"Case ORC&B-6-W

DECISION OF COMMITTEE  
CREATED BY AGREED-TO PROCEDURE DATED SEPTEMBER 2, 1953 UPON  
DISPUTES ARISING UNDER THE MORE THAN ONE CLASS OF ROAD  
SERVICE ARBITRATION AWARD DATED DECEMBER 3, 1952  
INVOLVING RAILROADS REPRESENTED BY THE  
EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES  
AND THE EMPLOYEES OF SUCH RAILROADS REPRESENTED BY THE  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS  
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

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Chicago, Illinois - May 1, 1958

Parties to Dispute: Order of Railway Conductors and Brakemen  
and  
Chicago and North Western Railway

Statement of Claim: Claim of Conductor R. J. Lajeunesse, Peninsula Division,  
under Rule 43(a) for an additional 100 miles account while  
employed on freight train #137, Escanaba to Ishpeming,  
Michigan, in through freight service, required to make a lap back trip in  
connection with shoving passenger train #209 stuck in snow between Negaunee  
and Ishpeming, with engine dead, February 21, 1953, in lieu of payment as made  
under the Guthrie Award, Article A(2), B and C(1) as "pusher service."

FINDINGS: Claimant's train was stopped by flagman of #209 at Negaunee  
with advice that #209 was stuck in snow with engine dead.  
Claimant cut off his engine, ran light to where #209 was stopped, coupled  
into rear of #209 and shoved it into Ishpeming, then returned light to  
Negaunee, coupled up his own train and proceeded into Ishpeming. Claimant  
performed a combination of through freight service and helper service. Para-  
graph I-A-2 of the awarded rule is applicable. Claimant was entitled to be  
paid for both services rendered at the highest rate applicable, plus additional  
time required in helping train No. 209 at the same rate.

DECISION: Claim to be disposed of in accordance with Findings.

EMPLOYEE MEMBERS

(signed) R. E. Davidson  
S. C. Phillips  
J. A. Paddock

CARRIER MEMBERS

(signed) Frank J. Goebel  
E. H. Hallmann  
W. S. Baker"

"Case ORC&B-22-W

DECISION OF COMMITTEE  
CREATED BY AGREED-TO PROCEDURE DATED SEPTEMBER 2, 1953 UPON  
DISPUTES ARISING UNDER THE MORE THAN ONE CLASS OF ROAD  
SERVICE ARBITRATION AWARD DATED DECEMBER 3, 1952  
INVOLVING RAILROADS REPRESENTED BY THE  
EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES  
AND THE EMPLOYEES OF SUCH RAILROADS REPRESENTED BY THE  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN  
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

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Chicago, Illinois - May 1, 1958

Parties to Dispute: Order of Railway Conductors and Brakemen  
and  
The Atchison, Topeka and Santa Fe Railway, Eastern Lines

Statement of Claim: Claim of Conductor J. C. Thompson, Missouri Division, for  
100 miles for a claimed lapback trip, Mile Post 254 to 256  
and return, September 19, 1954.

FINDINGS: Claimant was called at Shopton for Extra 147-West, a through  
freight train, going on duty at 10:45 p.m., September 18th.  
At 12:07 a.m., September 19th, claimant's train was stopped at Mile Post 254  
account Extra 181-West stalled and blocking main line. Claimant's engine  
was cut off and used to help Extra 181-West to Mile Post 256, after which it  
returned to his train at Mile Post 254, coupled up and proceeded on road trip,  
having consumed 23 minutes in helping Extra 181-West. Claimant arrived at  
Marceline and was released at 3:25 a.m., September 19th, on duty 4'40". The  
claimant performed a combination of through freight service and helper service.  
Paragraph I-A-2 of the Awarded rule is applicable. Claimant was entitled to  
and was paid for both services performed at the highest rate applicable, plus  
23 minutes additional time required in assisting another through freight at  
the same rate.

DECISION: Claim denied.

EMPLOYEE MEMBERS

(signed) R. E. Davidson  
S. C. Phillips  
J. A. Paddock

CARRIER MEMBERS

(signed) Frank J. Goebel  
E. H. Hallmann  
W. S. Baker"

Those are but a few of the decisions rendered by the Disputes Committees established by the Cheney and Guthrie Awards. Suffice it to say that those and all others cited have been consistent in their findings in cases such as the one before this Board.

In July and August, 1972, the following correspondence occurred on the property between Carrier's General Manager Holzmann and Director of Labor Relations Sayers:

"Houston, July 2, 1972  
3883

Mr. O. B. Sayers:

Attached is copy of my file in connection with claim of Condr. A. R. Bentley and crew for 100 miles account assisting a disabled train from Mile Post 5 to Mile Post 2 pole 10 on March 16, 1972.

Facts in connection with this case are that on date in question claimants were in service on train #168 and at Mile Post 5 were instructed to assist train AA up hill and did assist said train to Mile Post 2 pole 10, after which they returned to Mile Post 5 for their train and then proceeded to Palestine.

This case was recently handled in conference with General Chairman Niles and we took the position that the train which was assisted was not disabled but rather had laid down due to tonnage on hill and that claimants have been properly compensated under the more than one class of service rule. Mr. Niles states that the crew is due 100 miles account making an intermediate turn from Mile Post 5 to Mile Post 2 pole 10 and then returning for their train.

I recently wrote you in connection with a similar claim wherein the crew had not been required to detach their units to assist the train and you replied under date of May 16, 1972, your file 283-2267, that said service would come under more than one class of service rule.

I would appreciate your views regarding the attached claim as same has been held for further discussion at a later conference.

/s/ G. M. Holzmann"

"St. Louis, Mo., August 28, 1972

I 282-1081                   IGN-BRT-114-53  
283-2267                   IGN-BRT-111-46

Mr. G. M. Holzmann:

This has reference to your letter of July 28, 1972, file 3883, in connection with claim in behalf of Conductor A. R. Bentley and crew for 100 miles account assisting a disabled train from Mile Post 5 to Mile Post 2, Pole 10, on March 16, 1972.

The information contained in your letter shows that the claimant road crew was in service on Train No. 168, and upon arrival at Mile Post 5 instructions were issued for the crew to assist Train No. AA over the hill. Your letter indicates the crew on Train No. 168 uncoupled the engine, shoved Train No. AA from Mile Post 5 to Mile Post 2, Pole 10, and then returned to Mile Post 5 for their train. The claimant road crew then continued their road trip to Palestine, Texas.

General Chairman Niles is apparently basing the claim on the letter of understanding dated February 21, 1952, signed by former Chief Personnel Officer T. Short and General Chairmen of the operating crafts on the former IGN. The letter of understanding of February 21, 1952, (P. 36 of the U.T.U. agreement) called for the payment of local rate where a crew was required to assist a disabled train for a distance of two (2) miles or less, and the payment of an additional 100 miles where the distance involved in assisting a disabled train was more than two (2) miles.

If the letter of understanding of February 21, 1952, was still in effect, it would support payment of an additional 100 miles, but the letter of understanding was superseded by the 'More Than One Class of Service' award with the engineers, firemen and conductors of May 23, 1952, and the provisions of the letter of understanding insofar as the brakemen are concerned were set aside by subsequent decisions from the Disputes Committee.

Your attention is directed to the penultimate paragraph of the letter of understanding dated February 21, 1952, which was prior to the 'More Than One Class of Service' award covering engineers, firemen and conductors, and about six months following the effective date of the award covering brakemen. It will be noted the parties to the letter of understanding stated that the provisions thereof were without prejudice to the application of the award covering brakemen. This was necessary because at that time the Disputes Committee had not yet ruled on the specific question involving one road crew assisting another road crew, and it was understood that in the event the Disputes Committee reached a decision contrary to the one set forth in the letter of understanding that such decision would take precedence.

Subsequent to the date of the letter of understanding, the Disputes Committee ruled that brakemen were not entitled to an additional day when required to assist another train. The Disputes Committee reached the same conclusion with respect to application of the 'More Than One Class of Service' award applicable to conductors, engineers and firemen. You will note the method of payment for the additional service applies differently insofar as brakemen are concerned.

The instant claim is quite similar to the one cited in your letter of April 14, 1972, file TC 72-3887, and my letter of May 16, 1972, file N-283-2267, wherein you were advised to compensate the engineer and conductor under the 'More Than One Class of Service' award of May 23, 1952, and payment to the brakemen should be made under the award effective September 1, 1951, i.e., highest rate of pay for the entire trip for service performed.

Our files indicate we may have paid some employes more than they were entitled to under the 'More Than One Class of Service' award during the past several years. Please see that the timekeepers apply the award as set forth above and any claims progressed by the General Chairmen should be declined.

/s/ O. B. Sayers"


In view of the many decisions of the Disputes Committees under the Cheney and Guthrie Awards, and all of the other evidence of record, it is obvious that claimants performed a combination of through freight service and helper service. Under Paragraphs I-A-1-2 of the Guthrie Award, Claimant conductor was entitled to the highest rate applicable to the classes of service performed (through freight rate) plus 25 minutes extra compensation for time required in assisting the disabled train. Under the Cheney Award Claimant brakemen were entitled to the highest rate applicable to the classes of service performed (through freight rate) for the entire trip.

The Carrier says they were so paid, but at oral hearing the Organization said they think not. If not, they will be.

AWARD: Claim sustained to the extent indicated in the Findings.

Carrier is directed to make this award effective within 30 days following this date.

  
Leverett Edwards, Neutral Member & Chairman

  
For the Organization  
Dissent

  
For the Carrier