

PUBLIC LAW BOARD NUMBER 2492

PARTIES  
TO  
DISPUTE

UNITED TRANSPORTATION UNION  
vs  
THE DETROIT & TOLEDO SHORE LINE RAILROAD CO.

STATEMENT OF CLAIM:

Claim of Conductor Ritchey and Brakemen Kirkendall and Leonard for eight hours account being called as a road switcher and used as a through freight and 2 hours and 45 minutes for MOCS, Docket 286, Claim 28.

STATEMENT OF FACTS:

The Claimants were called from their respective extra boards to relieve crew of train 421/420. Crew on train 421/420 tied up at Dearoad due to the application of the 12-hour provisions of the Hours of Service Act and were relieved at that point by the Claimants.

FINDINGS:

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

The Carrier asserts, Claimants were called for extra service from their respective extra boards and reported on duty at Lang Yard. They were then transported by Company vehicle, under pay and on duty, to Dearoad at which point they assumed control of an intact train, including engines and caboose, which they thereafter operated in continuous movement Dearoad to Lang.

The Organization alleges Claimants were called as Road Switchers to relieve crew of train 421/420 which Carrier anticipated would stop somewhere between Dearoad and Lang as a result of the Hours of Service Act.

Train 421/420 did not advance as the Carrier had expected and as a result stopped at Dearoad.

The contract requires that when crews are called they be given a call for a specific class of service. There are no provisions in the agreement to call a relief crew per se. Therefore employees must be called as either a through freight or road switcher (local) crew. The Organization further asserts that when called, the crew caller informed Claimants that they would be driven to Edison to relieve crew on train 421/420.

This claim is premised on the contention that the crew performed more than one class of road service and arises under the provisions of Article 53 of the UTU Agreement and Article 10 of the Conductors Agreement which are identical and reads as follows:

"(a) Train in assigned or unassigned road service performing more than one class of road service in a train or tour of duty will be paid for the entire service at the highest rate applicable to any class of service performed, with a minimum of one hundred (100) miles for the combined services. The overtime basis for the rate paid will apply to the entire trip.

(b) Trainmen called for, or assigned to one class of road service may be required to perform two or more classes of road service in a trip or tour of duty. For the purpose of application of this article the different kinds of road service are classified as follows:

1. Through Freight Service: Handling of a car, or cars from Lang to Dearoad, or to the Detroit Terminal District (or beyond), or vice versa, and/or from the Detroit Terminal District to Port Huron, or vice versa; except those cars picked up, set off, used or intended for use during its tour of duty by a crew in another classified road service.

(c) Trainmen called for, or assigned to perform one class of road service who are required to perform one or more other classes or road service during a trip or tour of duty will be paid extra compensation on the minute basis, at pro-rata rates, for all additional time required for the other class or classes or road service; in addition to and without deduction from their continuous trip pay. If such other service is performed at more than one point, the actual additional time so consumed at each point shall be computed separately and then totaled to determine the full amount of the extra compensation. Not less than a minimum of one (1) hour will be paid for each such additional class of service performed."

The facts developed at the hearing reflect the crew was called for road switcher service and transported under pay to Dearoad where they were injected into through freight service. The crew spent 45 minutes at Dearoad Yard assembling cars for their train and departed Dearoad in a straight-away movement, Dearoad to Lang, arriving Lang Yard and tying up at 1725 hours (5:25 PM).

Under Article 53, more than one class of Road Service Rule, Through Freight Service is defined as: Handling of a car or cars from Lang to Dearoad....or vice versa, with certain exceptions which are not applicable in this instance. Thus under the rule, the crew performed through freight service when moving the cars in a straight away movement, Dearoad to Lang.

The Carrier refers to Section 15 of the parties' local Agreement of March 25, 1977 as the basis for obviating the payment for through freight rate - Dearoad to Lang:

"Additional time under the 'more than one class' of Road Service rules for time spent in road movement, over and above pay allowed for time consumed in the performance of other classes of Road Service at the location involved".

The language of this rule can only be interpreted as applying to crews who perform more than one class of service while en-route and eliminates dual payment for movement over the mainline from the point where the crew first performed a different class of service to the point where they were next required to perform a different class of service.

We do not have those facts and circumstances present in the instant claim thus the local agreement does not have application to the facts of this case.

The Organization relies on Award No. 32, PLB No. 494 from this property as support for the additional 100 miles claimed. The facts in Award No. 32 are distinguishable from the instant case. The facts in Award No. 32 reveal the Referee found the Claimants performed local service both ways and that they also carried the same cars through from their home terminal and back to their home terminal which constituted through freight service for the entire trip. Thus the allowance was predicated on that basis.

In the instant claim we find the crew is entitled to 100 miles at local switcher rate for which called and transported to Dearoad; one hour at road switcher rate for through freight switching at Dearoad and three hours and fifty-five minutes at road switcher rate for straight away through freight movement Dearoad to Lang. The Carrier to take credit for payment previously allowed.

AWARD:

Claim disposed of on the basis of the above findings.  
The Carrier is ordered to apply the Award within  
(thirty) 30 days from date of the Award.

Neil P. Speirs  
Neil P. Speirs, Chairman & Neutral

A. H. Bende - RW7  
For the Organization

D. H. Vane - Dissent  
For the Carrier  
*not accepted as precedent*

dated 11/4 1981  
Detroit, Michigan