

PUBLIC LAW BOARD NO. 1872

Award No. 6  
Case No. 6  
HNG 1989

Parties to Dispute:

CHESAPEAKE & OHIO RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

Statement of Claim:

Claim of Conductor J. J. Fergus, Brakemen J. M. Straight and C. D. Moore for 100 miles at through freight rate in addition to other time allowed February 20, 1975, account assisting another train.

Findings:

On the claim date, claimant crew was working its regular assigned "Carey Turn Local" which is Local Freight Service. Claimants were instructed to assist Train Extra 6195-3804 East, consisting of 151 cars, engines and caboose from Milepost No. 11, a point in road territory, into Parsons Yard. Time consumed in that assistance was from 3:30 p.m. to 5:00 p.m. The assistance was needed because the crew on Train Extra 6195 went under the application of the Hours of Service Law. The Organization relies on Article VII (and its Interpretation) and Article 22 in support of its contention that a Local Freight crew on the Hocking Division (C&O) is entitled to an additional day's pay for assisting or helping another train in the same or opposite direction.

Section 1 of Article 7 reads:

"In all road service, except passenger service,

100 miles or less, 8 hours or less (straight-away or turn-around) shall constitute a day's work. Miles in excess of 100 will be paid for at the mileage rates provided."

The Interpretation to this Section reads:

"In applying Section 1 of Article 7 it is the practice in through freight service on the Hocking Division not to add mileage for doubling, running for water, setting out cripples, pushing another train in the same direction, or any of the various moves which are made in handling a train to its destination, with payment made on the basis of specified or agreed to miles."

Article 22 reads:

"During the time any Conductor [or Brakeman] is performing double duty on any trip or day he will be paid for the extra service performed, miles or hours whichever is the greater in addition to his regular pay."

Carrier asserts that there is no rule support for the contention of the Organization; and that no such conclusion could be reached from Article 7 or its Interpretation. In its Submission, Carrier states:

"The Interpretation is clear as to the intent of the parties not to add certain mileage to crews in through freight service even though actually operated when assisting other trains, etc. The conclusion is inescapable that in other classes of service (such as local) such mileage is to be included in determining the miles/hours application of the basic day rule. It is illogical to conclude that the parties would agree to exclude entirely mileage operated in assisting other trains, etc., with respect to through freight crews yet find that the parties 'agreed' that such mileage made by a local freight crew or a work train crew in performing the exact same work would form the basis of a penalty (additional) day to cruise in such other classes of service. Certainly no language appears in the Interpretation lead-

ing to the conclusion that it expressly or impliedly supports [the Organization's] position that it is a penalty rule to the extent of requiring payment of an additional day."

It is clear from a reading of Article 7 that its provisions are ambiguous with respect to whether or not local freight service is exempted. In such circumstances, the Board must look to the past practice and interpretation by the parties in an effort to ascertain the rule's application to local freight service.

In paying a similar claim to a Conductor and Brakeman, Carrier's Vice-President in a letter dated February 28, 1946 stated:

"In view of the fact that the practice under Section 1 of Article 7 refers to through freight service and as [Claimant's] were in local freight service, we are agreeable to allowing [them] an additional day, less any overtime accruing on road trip by reason of assisting Extra 3000 West."

A similar claim was paid on January 5, 1948 by a Carrier Superintendent who also stated:

"In view of the fact that the practice under Section 1 of Article 7 refers to through freight service and as [Claimants] were in local freight service, I am agreeable to allowing them an additional day each, less any miles or overtime accruing on the road trip account of performing this service, and I am arranging accordingly."

At the hearing of this dispute, Carrier's representative contended that the previous practice was superseded by the Combination of Service rule in 1951. However, the record in this dispute shows that on November 24, 1970, Carrier's Director

of Labor Relations paid an additional day at the through freight rate to a local freight crew assisting another train on April 30, 1970 on the Hocking Division.

It is clear therefore that a practice of at least 24 years, mutually agreed upon and consistently applied, allowed local freight crews additional compensation when assisting other trains. Under the circumstances, the claim must be sustained.

AWARD

Claim sustained. Carrier is ordered to make payment within 30 days from the date of this AWARD.

M. A. Jones  
Neutral Member

J. J. Murphy  
Carrier Member

L. J. Wotasyak  
Organization Member

Date: March 15, 1982