

PUBLIC LAW BOARD NO. 164

Parties) United Transportation Union (T)
 to)
 Dispute) Union Pacific Railroad Company - Eastern District

Statement of Claim: Claim of Conductor C. C. Adamson, Brakemen H. A. Smallwood and W. R. Smith, Laramie, for 245 miles at through freight rates of pay in addition to allowances already accorded them for service performed October 7, 1967.

Findings: In this case and in its companion (but not identical) one, Case No. 177, Carrier required Laramie roadmen to perform yard work for one or more yard shifts and in so doing deprived them of road trips to which they were or might have been entitled. In Case No. 186 Carrier so used on claim date a first-out pool freight crew who would otherwise have had a road trip of 242 aggregate miles. In Case No. 187 Carrier so used brakemen who stood first out on the road brakemen's extra board. In each Case there was a separate seniority roster and extra board for yardmen. In each case Carrier tried unsuccessfully to get yard extra board men to accept a call for the vacancy and regular yardmen to double thereon. For both cases there is in evidence a 1955 letter of agreement, signed by Carrier's assistant labor relations vice-president and by the Organization's general chairman, to the effect that, where there are no yard extra men available for filling a yard vacancy and no regular yardman has filed a written request to work on his rest days, Carrier will require the junior "available regular (yard) man" to protect the vacancy.

One of the claimants is a conductor. Accordingly the Board invited the Conductors' Organization to send a representative to the hearing on this case, and said invitation was accepted.

Out of the prolonged discussions of these cases before the Board the following issues emerged: (1) Given the above mentioned 1955 agreement, were yardmen "available" for the vacancy (ies)? This is a question of fact and fact interpretation in respect to which Carrier, who used unavailability as a defense, had the main burden of presenting probative evidence. (2) if the answer to (1) is "No", how should claimants have been compensated? (3) If the answer to (1) is "Yes", how should claimants have been compensated?

As to the first question above, under said 1955 agreement it appears that no yardman is available to fill a yard vacancy at Laramie if (a) the yard extra board is exhausted, i.e., all extra yardmen are working and therefore cannot fill the vacancy; (b) there are men on the yard extra board who are not working but who have valid reason for not accepting a call for the vacancy, such as serious illness or leave of absence or who cannot be contacted when needed; (c) there are no regular yardmen on their rest days who have written their wish to work thereon and who have such valid reason for not working; and (d) there are no junior regular yardmen who can be required to take the vacancy because all such juniors have such valid reason for not working.

On these specific questions of availability Carrier failed to present probative evidence requiring a "No" answer to the first general question. If the answer were "No", there is evidence (in the form of exchanges of correspondence between Carrier and general chairman, mainly in the 1940's) in respect to proper compensation payable to roadmen like claimants.

(Webmaster's Note: If the steps indicated in the second paragraph above (a through d) have been followed and no yard employees are genuinely available the proper claim under the Eastern District agreement is for time and one half under Rule 32(K). No similar rule is included in the Northwest District agreement.)

If the answer to the first question cannot be firmly "No" it must perforce be weakly "Yes". Given this conclusion, the Board is of the opinion that claimants were improperly compensated. They should be made whole for their conscription into yard service. But precisely because the answer to the first question is weak, the Board is reluctant to allow the full amounts of their claims. "Making claimants whole" in this particular case is held to mean that Carrier is now directed to pay them within 45 days the difference between what they would have earned if not so conscripted and what Carrier actually did pay them when conscripted.

AWARD: Claim sustained per Findings.

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Carrier Member

Omaha, Nebraska
November 25, 1969