

PUBLIC LAW BOARD NO. 1021

Procedural Dispute

-----X
Butte, Anaconda & Pacific Railway Company:
and :
United Transportation Union (E) :
-----X

Upon due notice to Carrier, the Organization has requested that a Public Law Board be established to resolve disputes in the eight cases listed on Exhibit A, hereto attached. Carrier has declined to enter into an agreement to establish that Public Law Board on the grounds that (1) Cases 1 and 2 on said list concern issues that have already been adjudicated by prior tribunals on this property, namely, Public Law Boards 73 and 340, while (2) the six remaining cases on the list were not handled properly by the Organization and are barred by applicable time limit rules.

A hearing was held in this matter at Anaconda, Montana, on September 12, 1973, and representatives of the parties appeared at that time before Public Law Board No. 1021, consisting of Leo V. Kelly, the Carrier Member, Del C. Deering, the Employee Member, and Harold M. Weston, the Procedural Neutral Member. Briefs and supporting documents were subsequently filed by the parties.


We have carefully considered the contentions, evidence and citations presented by the parties and are satisfied that the Organization's Notice listing the eight disputes and requesting that they be resolved by a Public Law Board was timely and properly served and filed and that no valid basis exists for Carrier's refusal to agree to such a Board.

The Neutral's Certificate of Appointment stipulates that it has been issued for the express purpose of determining procedural issues and we are of the opinion that the parties' questions as to

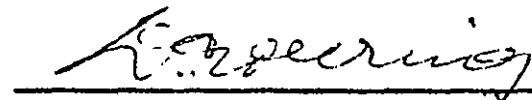
whether the eight claims in dispute should be sustained, dismissed or denied should not be dealt with by the Procedural Neutral, particularly when, as here, one of the parties objects to his doing so. At any rate, the proper time to consider the merits of the claims or whether or not they must fall due to time limit objections is when they can be explored and dealt with in depth by the Board sitting with a Merits Neutral.

AWARD

1. The Organization's request for a Public Law Board to hear and resolve the eight disputes listed in Exhibit A is timely and proper and is hereby sustained.
2. The Organization has the right to designate the cases it desires to present to the Public Law Board without Carrier concurrence and no additional cases will be added to those listed in Exhibit A without the consent of both parties. There accordingly is no valid basis for adding to that list of cases the additional issues suggested by Carrier, except that they may be considered to the extent, if any, that they bear directly upon the issues concerned in the eight listed cases.
3. The Public Law Board mentioned above in the two immediately preceding paragraphs will consist of Leo V. Kelly, the Carrier Member, Del C. Deering, the Employee Member, and a merits neutral who shall be Chairman of the Board. The Board's meetings will be held at Anaconda, Montana unless the parties agree otherwise and its powers and procedure will be the same as were previously agreed upon by this Carrier and Organization in forming Public Law Board No. 73. The merits neutral will also be selected in accordance with the procedure agreed upon with respect to Public Law Board No. 73.


Harold M. Weston, Procedural Neutral

Leo V. Kelly, Carrier Member


Del C. Deering, Employee Member

Dated: October 30, 1973

Case 1

Claim is made for 8 hours pay as Hostler for first out extra man from September 22, 1971 through January 4, 1972 and for all subsequent dates and for similar claims that have been processed. Protected under Articles X "Calling" of which no interpretation has been made see PL Board 340, Case 10. and IX and VII. Also oral and written instructions as handed down PL Board 340 Case 10 which are not being followed.

Case 2

Claim is made for 8 hours pay on the following days as Hostler Helper for the following Firemen when written instructions were issued to perform certain duties belonging to the Hostler Helper that is, throw all switches in connection to movement and fuel diesel locomotives on preparatory time at Anaconda Round House track. Articles XXI, XX, VII, XVI, Par. I. Also findings handed down when PL Board 73 on Rocker (an outlying point) Hostling were solved. General Manager's briefs as to engine movement on this board should be noted. PL Board 340 & case 10 findings should be adhered to.

G. J. Wien on the following dates October 17, 24, 29, and 31, 1971. November 3, 5, 14, 17 and 21, 1971 December 4, 6, 11, 14, and 20, 1971. January 5, 7, and 10, 1972.

S. J. Dira on the following dates January 14 and 17, 1972.

J. J. Walsh on the following dates December 19 and 20, 1971.

D. K. Farhart on the following dates January 14, 1972.

W. E. Gallagher on the following dates October 10 and 24, 1971. November 6, 14, 1971. December 5, 1971. January 5, 7, 10, 12, 14, 24 and 29, 1972.

W. R. Bennett on the following dates December 25, 1971 and January 17, 1972.

Also claim is made for these same Claimant and others on subsequent dates and/or similar claims that have been processed or protected.

Case 3

W. E. Gallagher, Fireman claims 8½ hours pay as Engineer on December 6, 1971 when deliberately run around on salaried personnel's directives when call was made to extra board man first out designating distinctly who was to be the Engineer regardless of seniority. Thereby using a younger Engineer. Extra board was not Engineer extra board. Articles XIV and XVI, Par. I are to be used with interpretations Also from BLE General Chairman.

Case 4

S. J. Dira claims 8 hours pay as Hostler Helper on October 20, 1971 when Fireman was instructed to perform certain duties belonging to the Hostler Helper.

EXHIBIT A (page 1)

Th is, throw all switches in directing Engineer to take engine out of Round House and put on ready track. Claimed under Articles VII, Par. G and IX. Also General Manager's interpretations on all back shop work was always done with a Hostler and Helper in briefs before PL Board 73 and 340.

Case 5

W. E. Gallagher, Fireman claims 44 miles deadheading on November 28 and December 1, 1971 when called to go to Rocker and seniority dictated that he could work in Anaconda. Claimed under Article VIII.

Case 6

A) L. E. McDermott claims 8 hours pay as Hostler when instructed to perform certain duties belonging to the Hostler at the Anaconda Round House track, on December 26, 1971. Claim has been made under time limitation rule and is pending and will be withdrawn if acted on favorably. Claim is also made under Articles VII, Par. H; VI, IX and XIV.

B) J. J. Walsh claims 8 hours pay as Hostler when not called (run around) to perform hosteling service on December 26, 1971 when others were used by instruction from shop foreman to perform Hostler's duties. Claimed under Articles VII and IX.

C) P. J. Everett claims 8 hours pay as Hostler Helper when not called and salaried personnel performed Hostler Helper's duties on December 26, 1971. Claimed under Articles IX and VII, Par. G.

Case 7

A) W. E. Gallagher, Fireman claims 8½ hours pay as Engineer on October 11, 1971 when Superintendent's interpretation on calling man from the extra board was not adhered to.

B) W. E. Gallagher, Fireman claims 8½ hours and 1 hour and 15 minutes overtime pay on October 15, 1971 at Engineer's rate when deliberately run around on Superintendent's instructions when he made the call using a man from the extra board. Claimed under U. T. U. (E) agreement Articles XIV and XVI, Paragraph A and I.

Case 8

W. E. Gallagher, Fireman claims 8 hours pay as Fireman on October 13, 1972 (Birthday Holiday) as a regular man when local agreement on holiday pay was not used. This superceded National Agreement which management used to decline case.

Exhibit F (page 2)