

PUBLIC LAW BOARD NO. 164

Parties ) Brotherhood of Railroad Trainmen  
to )  
Dispute ) Union Pacific Railroad Company-Eastern District

Statement of Claim: Claim of various Denver brakemen for 150 miles each on various dates in September 1965, account not being called to perform flagging service at MP 630.54.

Findings: The facts material in some degree to a determination of the subject dispute may be summarized as follows: (1) In 1965, including September (the month involved in the claims here presented), an interstate highway overpass was being built with public funds on Carrier's right of way above two tracks of Carrier (main and passing) at Sable, Colorado. (2) Carrier's construction participation in this project included (a) the approval of the building plans by Carrier engineers, and their frequent checking of work progress to Carrier's specifications; (b) the building of new drainage facilities and signal lines by Carrier's Maintenance of Way employees; and (c) the frequent resurfacing of the trackage by such men. (3) When the overpass construction work, which proceeded from 7 a.m. to 4 p.m. each workday, was about to begin, Carrier issued a train order to each of the crews of the trains (an average of six daily) scheduled to move through the area during those hours, to approach at restricted speed and to stop before passing the construction location unless a yellow flag proceed signal was received. (4) As the construction work began, and until the middle of November, 1965, Carrier used a section hand to (a) inspect the effects of excavations on the ground supporting the tracks; (b) inspect the tracks' surfaces and alignments visually and with gauge and notify his superior of faults therein; (c) keep track flangeways and switches clean; (d) use pick and shovel to fill in holes made by the equipment; (e) remove or get removed other debris and obstructions from tracks; (f) place and remove (or help to do so) wooden planks up to and between tracks, as needed, for a temporary crossing (the Organization denies this was done) for the passage of the contractor's trucks and other heavy equipment; (g) use maul to install new rail spikes and reset existing ones as needed; (h) protect (give signals to) the contractor's drivers in their track crossings; and (i) give the required stop or proceed signals to the approaching trains as needed in accordance with a "lineup" given to him by Carrier.

It is the last item of work above -- (4)(i) -- that the Organization here complains of, contending that same belongs exclusively to train service employees under (1) the scope of its traditional jurisdiction when trains move over the road under train

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orders; (2) Rule 63 - Special Roadway Service; (3) certain First Division awards, especially Award 17169; and (4) Award No. 1 of Special Board of Adjustment No. 592 on this property, allegedly involving an identical situation, except for the location and the Organization (Conductors) there involved, and an identical Rule.

These contentions and the above-recited facts pose two main issues to this Board. The first is one of law and requires findings on the nature of practice, on the meaning of Rule 63, and on the import of said Awards. The second issue is one of facts interpretation, given the law as found.

As to the law, the Board finds as follows: (1) As to practice: (a) Carrier concedes that (i) train service employees (including brakemen) have always had the right to flag for their own trains; (ii) prior to said Award No. 1 Carrier had usually called such men for work involving on-track equipment where derailments, rail renewals, ballasting, and washouts were involved; (iii) Article III of the National Agreement of June 25, 1964, has governed Carrier as to the use of conductors on self-propelled machines under the four conditions specified therein; and (iv) before said Award No. 1, Carrier states it had seldom used a brakeman for the kind of flagging here involved (the Organization disputes this alleged fact). (b) The Organization concedes that Carrier may properly use a section hand to protect maintenance of way crews and their work out on the road and to protect crossings such as roadways. (c) For pre-Award No. 1 situations like the one herein, practice is in some dispute. In any case, such situation is in a "gray" area practice-wise. (2) As to Rule 63: Nothing therein requires Carrier to use a brakeman for "special roadway service" like that herein. In substance the language says only that, if Carrier in its discretion does decide to use a brakeman for such work, Carrier need not follow the Bulletin and Seniority Rules, and Carrier must compensate him as set forth in the Rule. (3) First Division Award 17169 persuasively presents a criterion for determining, in a situation somewhat like that here, whether the service of passing signals to road trains belongs to a trainman or to a section hand, namely what was the "core", i.e., the main elements, of the work performed? To state the criterion somewhat differently, was the flagging the chief element or was it only incidental to (in connection with) other, more important work. (4) This principle or criterion appears to have been followed by S.B.A. No. 592 in its Award No. 1, for in the last, "punch" paragraph thereof that Board found that (a) the section hand therein "had the duty only to give proceed signals to all trains when the track was clear" and (b) there was no "Maintenance of Way service to be performed" or "in progress". This language can mean only that the flagging there was not only the "core"; it was everything. (5) This Board in this case hereby adopts this "core" criterion for application to the facts of record. That is, this Board has no intention of abandoning the principle established by said two Awards.

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Given all the above, the Board must now apply the above-explained and accepted principle to the previously summarized facts of this case. In doing so the Board takes judicial notice of the further, general fact that Maintenance of Way work involves not only the construction of new structures, right of way, etc., but also the repair, inspection, and preventive maintenance of existing ones. The facts herein show reasonably well that the latter duties were among those important ones that the section hand assigned to Sable in September, 1965, was required to perform and did to the extent of his abilities perform as necessary, by himself or with others. These duties, like those of any other regular section man day by day on his territory, were maintenance of way work.

But he also gave proceed and stop signals to road trains operating under train orders, as the situation may have dictated. This work may certainly properly be performed by a brakeman even though the train is not his own.

Then which of the two sets of duties constituted the main or core one? The section hand was at Sable, of course, to protect the movements of the trains. But this is what any section man does in his territory for any train in the inspection and preventive maintenance portion of his service. And if in the course of doing said portion any such employee discovers something amiss with the trackage he is assigned to protect, he is properly required by Carrier's rules to place torpedoes, give signals, and anything else necessary to keep a train moving under train orders from getting hurt at the "amiss" point. This Board is of the opinion that (1) the maintenance of way duties performed by the Sable section hand and the signaling service he did were all part of one ball of wax, namely train protection; (2) nothing in the record of this particular case commands a finding that the signaling portion of his day-to-day work was the main or core portion; and (3) same was only the culminating or end product of his total protection job, very important in itself, to be sure, but not clearly here the major one.

All of the above means that the Board has rejected the notion that in such a case as this a train service employee has the exclusive right to pass the signals to the trains. This being so, the within claims must fail.

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The Board knows that there are 39 other, generally similar claims in this docket yet to be submitted to it. Obviously, in view of the bases for the ruling in the case here decided, each such other case will have to be considered in the light of its own facts. The subject case establishes the governing principles that must and will be applied to the particular facts of each other case.

AWARD: Claim denied.

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Carroll R. Daugherty  
Carroll R. Daugherty  
Chairman and Neutral Member

J. H. Kenny  
J. H. Kenny, Carrier Member

J. H. Shepherd  
J. H. Shepherd, Employee Member

Omaha, Nebraska

July 26, 1968

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