Case No. 1
Award No. 1

PUBLIC LAW BOARD NO. 1891

PARTIES TO DISPUTE ) Brotherhood of Locomotive Engineers

- and -

Central Vermont Railway, Inc.

STATEMENT OF CLAIM:

Claim of Engineer M. A. Rose of February 18, 1976 Claim Ticket #18A for 5 Hours 50 minutes and claims of Engineer E. T. Kane of March 2, 1976 Claimant Ticket #2-1/2 claiming 2 Hours 20 Minutes and Claim Ticket #4-1/2 dated March 4, 1976 for 2 Hours at yard rates for performing switching at Brattleboro, Vt., beyond one straight set-out and/or one straight pick-up. Also all simular claims of record thereafter. Claims are made under the provisoins of Article 81 of Engineers Schedule.

FINDINGS:

This Board upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

Claimants are Engineers operating in Through Freight Service from Brattleboro, Vermont to New London, Connecticut. In addition to service performed on their road trip, Claimants submitted a separate claim ticket at the yard rate premised on their contention that they performed switching at Brattleboro Yard. It is the Employees' position that since Claimants were Engineers assigned to road service yet were required to perform switching at Brattleboro Yard beyond one straight set-out and/or one straight pick-up, consistent with Article 81 of the parties' schedule Agreement, Claimants are entitled to be paid for such service at the yard rates for all time consumed in performing said switching with a minimum of one hour.

The Carrier denied the claims asserting that they lacked rule support. Carrier submits that Article 81 applies only to crews operating through Brattleboro and not to crews originating at Brattleboro. The Carrier further maintains that they cancelled both Article 81 as well as the April 21, 1944 agreement that had originally allowed road crews compensation when they were required to perform switching at Brattleboro. Accordingly, Carrier insists that there is no contractual support for the instant claims submitted by the road Engineers.

After a careful review of the entire record before us this Board finds that Article 81 clearly supports the instant claims. We consider the provisions of Article 81 clear and unambiguous. They state that road engine crews who are required to perform switching at Brattleboro beyond one straight set-out and/or one straight pick-up will be paid for such service on the minute basis at yard rates for all time consumed in the performance of such switching with a minimum of one hour. Nowhere in Article 81 can one discern language limiting the provisions thereof solely to those trains running through Brattleboro as the Carrier contends. Rather the rule specifically applies to road crews performing switching at Brattleboro (emphasis supplied). Moreover, the April 21, 1944 agreement from which Article 81 evolved contained no such limitation. That agreement also allowed road crews compensation at the yard rates when they performed switching at Brattleboro. It must be noted that the jurisdiction of this Board is limited to the interpretation and application of collective bargaining agreements as they are written. We are precluded from supplying exceptions or limitations when none are found to exist in the contract as it was drafted. Thus if, as Carrier contends, conditions at Brattleboro have so drastically changed since 1944 that the provisions of the April 21, 1944 agreement are no longer applicable, then Carrier should have abrogated the agreement long ago. However, this Board lacks jurisdiction to do so. Although the Carrier insists that both the April 21, 1944 agreement and Article 81 have been cancelled, this Board must respectfully disagree with their assertion. When the April 21, 1944 agreement was executed, the parties specifically provided that it was subject to cancellation by either party on ten days notice. However, the provisions of the 1944 agreement were subsequently incorporated into the parties' 1956 Wage and Rule Agreement on August 28,1956 verbatim save for the ten day notice proviso. In lieu thereof they provided, in Article 84 of the 1956 Wage and Rule Agreement, that said Agreement superseded all previous rules and agreements and shall continu in effect until changed as required by the Railway Labor Act. Although the 1956 Agreement was subsequently invalidated, on March 18, 1965 the parties mutually agreed that Engineers represented by the Brotherhood of Locomotive Engineers would continue to work under the provisions of the 1956 Agreement. Thus the requirements of Article 81 continued in effect until they are changed pursuant to the provisions of the Railway Labor Act.

The Carrier asserts that they have done precisely this when on, March 10, 1976, they served a Section 6 notice on the Employees cancelling Article 81 effective April 10, 1976. This Board is constrained to conclude that we are without jurisdiction to determine whether the Carrier cancelled Article 81 effective April 10, 1976 consistent with the requirements of the Railway Labor Act. Section 3 of the Act limits this Board to the interpretation and application of collective bargaining Agreements. We are not granted jurisdiction to adjudicate disputes arising under Section 6 of the Act nor are we adequately prepared to do so. Jurisdiction is vested in the National Mediation Board to render such determinations. Accordingly, this Board holds that, unless advised to the contrary by the National Mediation Board, we consider Article 81 in full force and effect and clearly applicable to all the claims before us, those arising prior to April 10, 1976 as well as those arising subsequent thereto. And merely because the Carrier served the requisite notice on the Employees cancelling the April 21, 1944 agreement, this obviously has no bearing on the instant dispute inasmuch as Article 81 of the 1956 Agreement, as extended by the March 18, 1965 understanding, obviously superseded the 1944 agreement.

This Board further holds that merely because no claims were filed by the Employees for a period of three years and five months, this nonetheless did not preclude the Employees from asserting a violation of Article 81 as they have done herein. As noted heretofore this Board finds Article 81 clear and unambiguous, and as such, claims alleging a violation thereof may be submitted at any time providing, of course, that any applicable time limits are complied with. Moreover, neither the July 13, 1966 Southern Division way freight agreement nor Article V of the June 25, 1964 National Agreement vitiated the clear provisions of Article 81 as the Carrier suggests. However, consistent with Section 11 of the August 11, 1948 National Agreement, any initial terminal delay payment previously accorded Claimants for any of the claim dates must be deducted from the compensation due them under Article 81. Accordingly, this Board concludes that the instant claims are supported by the clear and unequivocal provisions of Article 81. Claimants are therefore entitled to be paid at yard rates for all time consumed in switching at Brattleboro less any initial terminal delay payment previously granted them.

AWARD:

Claim sustained per the Findings.

Carrier is ordered to make the Award effective on or before thirty days from the date hereof.

Robert M. O'Brien
Robert M. O'Brien, Chairman and Neutral Member

J. W. Crawford
J. W. Crawford, Employee Member

K. D. Fadden Dissent
K. I. Fadden, Carrier Member

Dated this 31ST day of October, 1977.