PUBLIC LAW BOARD NO. 4450

AWARD NO. 77
NMB CASE NO. 77
UNION CASE NO. C-236-357
COMPANY CASE NO. 9504389

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
Western Region

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Claim of Engineer F. C. Tafoya and Fireman K. D. Gustafson for one basic day account required to go off their seniority district on February 9, 1995.

OPINION OF BOARD: On February 9, 1995 Engineer F. C. Tafoya and Fireman K. D. Gustafson (Claimants) were working pool freight service between Portland, Oregon and Seattle, Washington (home terminal). On this particular date, Claimants were called on duty for the HKSE-09 operating from Albina, OR to Seattle, WA. When Claimants arrived at the Terminal Building, at the instruction of the Portland (Albina) Terminal Officers, they were transported to and took charge of their outbound train at Sandy, OR . Claim was submitted for payment of a basic day alleging claimants had been required to go off their seniority district when transported from Albina to Sandy, OR, as follows:

> "We claim 130 miles each account the Albina Terminal Management required us to take charge of our train @ Sandy. This is off our Seniority District. We had UP6048 receive track warrant # 848 on 210195 from DAS. Track warrant issued @ line 2 MP22 to MP6 with Line 17 east switch at Champ lined for siding. Switching limits only extends to Sandy for 2nd District. We claim a 130 miles each account used off our Seniority District."

The claim is premised upon Rule 23 of the Agreement between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers for the Northwestern District, reading as follows:

"Rule 23
Used Off Seniority District

When engineers are used off of their assignment from an intermediate point onto another seniority district, they will be allowed a minimum of 100 miles therefor at the rate and under the rules governing the class of service performed on the extra trip, but such miles or hours will not be used in computing time on the assignment."

The claim was denied by Carrier's Timekeeping Department and subsequently appealed by BLE Vice Local Chairman Russell W. Bennett on July 25, 1995, stating, in part: "The switching limits at Sandy only apply to crews of the Second Seniority District. The parties extended those limits so a Second District yard crew could spot Reynolds Aluminum Plant at Troutdale. The Agreement did not extend the First Seniority District limits." Carrier's Manager Labor Relations responded to the appeal on September 11, 1995 and denied same on the basis that the switching limits extension referenced in Vice Local Chairman Bennett's appeal applied to all employees; not just Second Seniority employees working yard assignments.

The "Switching Limit Agrement" of August 7, 1987, upon which Carrier relies in denying these claims, reads as follows (Emphasis added):

"SWITCHING LIMITS - ALBINA

In order to provide better service to customers and perform switching tasks more efficiently in the Albina Terminal, the switching limits at Albina will be changed as follows:

1. The Eastern switching limits on both the Kenton and Graham Lines will be extended East, past the point where the two lines join at the Troutdale Junction Switch, to Mile Post 17, which is presently a point in the approximate middle of the Sandy Siding.

2. For purposes of applying Article VIII, Section 2 of the 1986 BLE and 1985 UTU National Agreements, relating to disabled or hours of service trains, and providing service for customers outside switching limits, the twenty (20) and twenty-five (25) mile distances will be measured from the former switching limit on the Graham Line, which is at M.P. 12.25. Thus a yard crew under this agreement will be allowed to bring in a disabled train from M.P. 37.25, and provide service to customers out to M.P. 32.25. Yard crews will be able to perform work train and wreck service to M.P. 17, but not beyond that point.

3. Pay for bringing in disabled or hours of service trains, i.e., actual time outside switching limits with a minimum of one hours, will continue to be computed from the old switching limits at M.P. 14.5 on the Kenton Line and M.P. 12.25 on the Graham Line. However, if the yard crew is already working east of either of these two points, the time will be computed from the time they are instructed to pick up the train until they resume their regular work within the switching limits, or pass M.P. 14.5 or M.P. 12.25 with the disabled or dogcaught train, whichever occurs first. Pursuant to National Agreements of 1978, no additional compensation is provided to yard crews for providing service to customers located outside of switching limits."

That Switching Agreement (LR-512-1-1) was negotiated at Carrier's request, pursuant to notice under Article II, Section (a) of the BLE National Agreement of May 13, 1971, which reads:

> "Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, specifying the changes it proposes and the conditions, if any, it proposes shall apply in event of such change. The carrier and the General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding."

Throughout handling on the property and before this Board, the former BLE General Chairman, who negotiated and signed LR 512-1-1 on behalf of the Organization, asserted, without contradiction from Carrier, that the avowed purpose of the negotiators of LR-512-1-1 was to "accommodate the Carrier's need to better service the Reynolds Aluminum Plant which was just outside the previous switching limits. Moving the switching limits allowed the yard crews to provide more timely service rather than road crews which expedited the train handling through this

area, also, it accommodated the shipper..." In the face of the emphasized language of LR-512-1-1, *supra*, and the unrefuted evidence of specific bargaining history and intent, we are loathe to read into that Agreement a general extension of First District road crew seniority limits so as to permit Carrier to avoid the consequences of Rule 23 for requiring Claimants to take charge of their Albina Yard train at Sandy.

AWARD

- 1) Claims sustained.

2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.

Dana Edward Eischen, Chairman
Dated at Spencer, New York on March 11, 1998

Union Member

Company Member