Award No. 1
Case No. 1

PUBLIC LAW BOARD NO. 5407

PARTIES TO DISPUTE: United Transportation Union

AND

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM:

Request in behalf of Needles Conductor, D. R. Kelley, for payment of earnings deprived made by Pool 6313, because of not being called in engine service in accordance with the October 31, 1985 National Agreement beginning on July 3rd and continuing until August 5, 1991.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

At the outset, it should be made clear that the Brotherhood of Locomotive Engineers was made aware of the pendency of this dispute and offered the right to participate as a third party interest. That Organization determined that it would indeed participate and submitted a pre-hearing brief, as well as participated in the hearing itself.

The critical elements in this dispute are that on July 3, 1991, the Claimant herein, a Conductor, was recalled to engine service with an engineer seniority date of June 8, 1990. Another employee, Conductor Collins, had an engineer seniority date of October 31, 1989. The occurrence was Claimant was force assign to engine service while Conductor Collins was permitted to remain in train service. It is Claimant's belief that he should not have been forced to take up the engineer's position, as long as Conductor Collins remained in train service. Claimant believes that he lost substantial earnings as a result of this improper forced assignment. It is relevant to know that there were no standing bids at the time. The thrust of the claim was that the claimant was able to hold an assignment in engine service as an engineer, and therefore had to take this assignment, which he perceived was inferior to the trainman's position, which Conductor Collins, who was his junior, was working.

Among other rules relied upon by Petitioner was Section 3(3) of Article VIII of Article XIII of the October 31, 1985 National Agreement, which reads in relevant part as follows:

> (3) An employee who has established seniority as conductor (foreman), trainman (brakeman-yardman), hostler or hostler helper (but without seniority as a locomotive fireman) who is selected for engine service shall retain his seniority standing and all other rights in train and/or yard or hostling service. However, such employee shall be permitted to exercise such rights only in the event he or she is unable to hold any position or assignment in engine service as engineer, fireman on a designated position in passenger service, hostler or hostler helper.

It is the Organization's position on recall of trainmen and yardmen, that the senior furloughed employee is to be recalled to service, not the junior employee. In this instance, Claimant should have been allowed to remain in train service in the pool from July 3, 1991, through August 5, 1991, according to Petitioner. Furthermore, the Organization insists that the BLE and the Carrier do not have the authority to negotiate agreements, which will in any way alter or effect the working conditions of any employee represented by

the UTU without first having a mutual agreement by that Organization, namely, the UTU.

The BLE notes in its argument that under its rules, engineers are recalled from the reserve board in reverse seniority order. Thus, in this case, it was proper to apply the BLE rule and call back to engine service the junior engineer, the claimant Mr. Kelley.

It is the view of this Board that the BLE agreement is controlling when promoted engineers are returned to engine service from train service.

The Carrier takes the position that Claimant Kelley, in this instance, in terms of his assignments, was not mishandled. Carrier notes that Kelley was able to hold the assignment in engine service as an engineer and therefore had to take this assignment, which Conductor Kelley perceived as inferior to the trainman position, which Conductor Collins was working. The Carrier believes that accepting the Organization's position in this dispute would specifically suggest that the UTU had jurisdiction over BLE matters. The Carrier relies in part on Award No. 1 of Public Law Board 5056 involving the same parties, which held in relevant part:

> That consistent in such argument is the position that the UTU (E) along with the BLE is somehow a second labor representative when it comes to engineer's seniority. Obviously, any decision sustaining the claim herein would necessarily recognize the validity of the UTU (E)'s position. However, this Board lack's jurisdiction under the RLA to issue any Award which could be interpreted to give the UTU (E) representative bargaining or decision making powers over any aspect of an engineer's rate of pay, rules, or working conditions.....

The Board has examined this case with great care and is convinced that there was no error in the handling of the particular assignment of Conductor Kelley in this instance. It appears that the UTU was attempting to apply its seniority rules to this assignment, with respect to engine service. This is inappropriate. The BLE rule should prevail in this respect and it happens to be contradictory to the UTU with respect to such type of assignment (force assignments). It is clear, as the Board view it, that this dispute and argument is not as it stands in the best interest of the engineers in terms of the confusion which it engenders. It is strongly suggested that the three parties involved in this matter, the BLE, the UTU, and the Carrier, attempt to reconcile the language

of the two agreements, with respect to this issue. Such a resolution could be of great benefit to all concerned.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

J. L. Easley
Employee Member

T. M. Hort
Carrier Member

Schaumburg, Illinois
February 25, 1995