

PUBLIC LAW BOARD NO. 164

Parties) United Transportation Union (T)
to)
Dispute) Union Pacific Railroad Company-Eastern District

Statement of Claim: Claims for various Ogden brakemen account not used for flagging purposes on dates in July, August and September 1965, for 150 miles each account not called to perform flagging service.

Findings: The Parties agree that the award in this case will require like awards in Cases Nos. 28 through 37, because the construction site and the work involved thereat are the same for all eleven cases; i.e., only the claimants and their claim dates differ from case to case.

For each such case the Parties are also agreed on the correct claimants and claim dates among those originally submitted; it is therefore unnecessary that said correct items be set forth in the award for any of this group of cases.

There is a third area of agreement. For each of the eleven cases the Organization concedes that certain of the claims that are correct as to date and as to the person who is the claimant have no merit under the facts and under the application thereto of the principle set forth in this Board's Award No. 1. These no-merit, otherwise correct claims embrace two kinds of flagging service performed by maintenance of way employees and earlier (on the property) challenged by the employees: (1) the red-flagging done about a mile in each direction from the construction site; and (2) the yellow-flagging done at said site by the middle section hand among three such men whom Carrier had distributed rather evenly along the 1500 foot right of way adjacent to and on the length of said site. In other words, among the claims properly before the Board the Organization is now pressing only those related to the flagging of the two yellow-flag "end-men" in respect to the section hands who did all the flagging in these cases.

The reason for this concession is simply this: The Organization agrees that the core work of the section hand red-flaggers and of the section hand middle yellow-flagger was or may well have been not said flagging but true section hand work. This means that the Organization makes no such concession for the end-men yellow-flaggers; in Petitioner's view the core service done by each section hand in each such pair was flagging and not maintenance of way work, belonging therefore to a train service claimant.

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Given all the above, the issue herein is again one of fact and fact interpretation from the weight of the evidence of record. In respect thereto, the Board finds as follows: (1) During the whole period covered by the correct claims in all these eleven cases a portion of a hillside near Ogden was being removed by an outside contractor for the construction of part of an interstate car freeway along Carrier's two-track main line. A used old two-lane highway ran along said tracks. (2) The construction work involved heavy blasting in granite rock two or three times a week. At blast time the red-flags stopped trains, if any such were then east or west bound, then told them to proceed to the point where the yellow-flagging end-men were located, the latter stopping the trains or letting them proceed slowly. (3) The blasting often if not always caused large amounts of rock and debris to cover both main tracks, which then had to be removed by the contractor's equipment and by the section gangs. The blasting also loosened much rock, which did not immediately plunge down on to the tracks but over considerable periods took its own good time in getting loose and descending. (4) Under these conditions Carrier had sizeable section gangs working on the 6 a.m. - 2 p.m. and 2 p.m. - 10 p.m. shifts and had three section hands on the 10 p.m. - 6 a.m. shift. (5) The latter trio did patrolling, rock removing, track-observing, and yellow flagging, occasionally calling for additional men when necessary. The available data for these "graveyard" men do not permit a breakdown into flagging hours versus hours spent in section hand work. The best that the Board can do is to infer that (a) on that shift there were not so many trains as to cause most of the end-men's time to be spent in flagging and (b) between trains they assisted in performing patrolling, rock removing, and track checking. The Board is persuaded on balance that the work done by these graveyard end-men was not flagging in the "core" sense but was incidental to their maintenance of way service. (c) As to the first and second shifts, the evidence is in conflict. The able local chairman who testified for Petitioner at the hearing stated that (a) he spent some eight or nine days observing daylight operations in the area for periods ranging from about 0.5 to 4.0 hours, and (b) during said observations the two end-men did nothing but yellow-flag and hang around the shanties built for them by Carrier. The equally able engineering representative of Carrier testified, from conversations with responsible Carrier officials in the field, that during between-train periods the "yellow end-men" most certainly did not waste Carrier's money by standing around but rejoined their section gangs of "dancers", returning to flag only when the train lineup (list) or the motor car indicator showed a train to be on the approach. Other evidence in the form of letters from train service employees,

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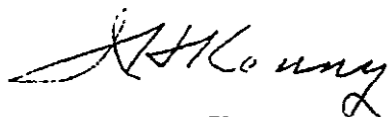
engineers, and a section hand was introduced, as well as snapshots taken by the local chairman. The Board can of course pick well-known legal and statistical flaws (hearsay, relevance, sampling, etc.,) in all these items of evidence. Nevertheless, from the mass thereof one valid, reasonable impression does emerge: The weight of evidence does not allow a firm finding that the first and second shift "yellow end-men" devoted so much of their times and energies to flagging that same constituted the cores of their total services.

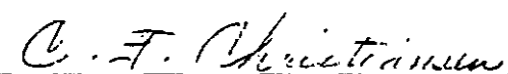
Given the above findings for each of the three shifts involved in the blasting and non-blasting phases of the work covered by the claims period, the Board is compelled now finally to rule that the claims herein do not justify a sustaining award.

AWARD: Claim denied.

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Carroll R. Daugherty
Chairman and Neutral Member


J. H. Kenny, Carrier Member


C. F. Christiansen, Employee Member

Omaha, Nebraska
March 4, 1969

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