Award No. 2
Case No. 2

PUBLIC LAW BOARD NO. 2104

Parties: Brotherhood of Locomotive Engineers
and
Sacramento Northern Railway Company

Statement of Claim: "Claim of Engineer R. D. Block for 100 miles for day April 1, 1977 and 100 miles for every day thereafter that the Chico job was not assigned.

Discussion: Memorandum of Agreement No. 6, here in issue, was executed on July 29, 1942 and it states in its relevant parts:

> "It is understood and agreed ... that when all the switching done at Chico, California, amounts to four (4) hours or more within each twenty-four (24) hour period for six (6) consecutive days a Yard or Roustabout crew will be established.
>
> When the work performed at Chico by the Yard or Roustabout crew does not amount to four (4) hours or more within each twenty-four (24)hour period for six (6) consecutive days, the Yard or Roustabout crew may be discontinued until such time as all switching done in Chico amounts to four (4) hours or more within each twenty-four (24) hour period for the specified time."

The antecedents of this dispute are that in the early 1940's the Federal Government maintained an air base north of Chico. Rail service for this base was furnished by the Carrier through a connection at the end of the Carrier's main line. However, as a result of the Office of Defense Transportation Regulations, the Carrier was prohibited from supplying the base with gasoline by rail car. Due to the termination in Carrier business as a result of the ODT Regulations, the Organization and Carrier negotiated the July 29, 1942 Agreement establishing a yard or roustabout crew at Chico. However, later in 1942 the roustabout

assignment at Chico was abolished, and there has been no such assignment at Chico since 1942. Whatever switching was required at Chico on the airport, has been performed by the local freight assignment operating between Yuba City and Chico (Chico Turn), home terminal at Yuba City.

On August 16, 1976, the Organization wrote the Carrier, noting that Memorandum of Agreement No. 6 provided, inter alia, that when all switching at Chico amounted to more than four hours for six consecutive days a yard or roustabout crew will be established. The Organization contended that six consecutive days means six consecutive working days and that switching must be computed from time begun until time completed including time moving from assignment to assignment within the yard or switching limits. The Organization's letter concluded by requesting the Carrier to establish a yard or roustabout assignment or that the present local freight assignment be paid roustabout rates.

The Carrier replied on August 20, 1976, taking issue with the Organization's contentions, and it did not establish a Chico yard or roustabout assignment.

On April 1, 1977, the Claimant filed the instant claim. He was on the Sacramento Extra Board. He was called on the claim date for the Chico Turn and filed a claim for 100 miles because the Carrier had not bulletined a Chico Yard Job in accordance with Memorandum Agreement No. 6.

The Chico Local leaves Yuba City and goes 47 miles to Chico. When it enters the Chico Yard limits, switching time starts to count. Within Chico Yard limits there are 18 industries spread over an areas of five miles.

Organization's Position

The Organization states the claim is valid because the Carrier switched at Chico Yard for more than four hours in each 24 hours, for seven consecutive days between March 23 and 31, 1977, but the Carrier failed to bulletin a yard or roustabout job in Chico Yard.

The Organization contends there are two issues to be resolved: (1) how is Switching Time measured and; (2) how are the six consecutive days determined.

Turning to the first issue, the Organization stated, in measuring switching time, it is necessary to count more than the actual time spent in switching. It contends that the time spent in going from one industry to another must be counted. The Organization maintained that the Carrier adopted an unduly narrow and restricted view in contending that only the time devoted to the physical act of switching can be counted. The Organization stressed that all the elements of work that go into a yard job should be counted, such as picking up and setting out cars on various tracks; spotting cars at industries; picking up cars at industries; switching out said cars; hauling cars from one industry to another and any delays encountered in performing said switching duties. The Organization stated the Chico Local Freight Crew performs all these named duties and therefore all the time devoted thereto should be counted in ascertaining the time spent in switching. It added it is unreasonable only to count the time when the "wheels are turning."

In considering the second point, the Organization stated that the Chico Local was a six-day job when the Memorandum of Agreement No. 6 was executed and it so continued until the Carrier unilaterally changed it to a five-day assignment in April 1976. The Carrier

stated it was so customary to regard the Chico Local as a six-day job that the drafters of Memorandum of Agreement No. 6 never considered adding the word "working" to describe the six consecutive days. It stated that the logical conclusion that comes to mind is that when the Agreement read "six (6) consecutive days" it meant a work week.

The Organization asserted that the way the Carrier interprets "six (6) consecutive days," it is now impossible to qualify for a Chico Yard or Roustabout Job. Such an interpretation renders the Memorandum Agreement meaningless. In effect the Carrier has changed the Memorandum Agreement unilaterally in violation of the Railway Labor Act.

The Organization stated the negotiators of Memorandum Agreement No. 6 were reasonable men seeking to effect a workable formula as to when a yard or roustabout job should be added. They agreed that if there was enough work in a week to warrant putting on a yard or roustabout job, then it would be done. Otherwise it would not be done, or it would be taken off.

The Organization urges that the Carrier's unreasonable and restrictive interpretation be disregarded and the claim sustained.

The Organization also denies that there is any merit to the Carrier's procedural objections concerning time limits. The 1976 letter by the General Chairman was not a claim but a request or an inquiry and that if the Carrier did not correct the situation, a claim would be filed. However, the 1976 letter of the Organization was not a claim. The claims based on the violation were filed by the Claimant in 1977 when he was on the extra board and not called for a Chico Yard job which should have been, but was not, established under the requisite criteria.

Carrier's Position

The Carrier states the claim is invalid for the following reasons: (1) it is barred under the Time Limit Rule; (2) it conflicts with Agreements providing that there will be no separation between road and yard service; (3) the amount of switching performed at Chico within the six consecutive days prior to April 1, 1977 did not amount to four hours on each day; and (4) the 1942 Agreement specifically provided "six consecutive days" and not six consecutive work days.

With regard to the Time Limits Rule which is Rule 79 of current Agreement, it provides that all claims and grievances must be presented in behalf of the employees involved within 60 days from the date of the occurrence on which the claim or grievance is based.

The Carrier noted that the General Chairman wrote the Carrior on August 16, 1976 that:

> "2. The records show conclusively that well in excess of four hours switching is being done each working day."

The Carrier stated in view of the General Chairman's statements in presenting his letter of August 16, 1976, it is obvious the Claimant did not conform with the Time Limit on Claim Rule, by not presenting his claim within 60 days of the period referred to by the General Chairman in his August 16, 1976 letter. On the contrary, the Claimant waited some seven months to present a claim based on the same premises set forth by the General Chairman in 1976. Under this record, the Carrier urges the Board to dismiss the claim for failure to comply with the Time Limit Rule.

Secondly, the Carrier stated the claim as filed is in conflict with Rule 32 which provides that the employees agree there will be no separation of yard and road service. When the claim contends that a yard job should be established and bulletined at Chico, it is seeking to establish separate yard service at Chico, which is in violation of the rule that provides there will be no separation of yard and road service. On April 1, 1977, the Claimant was a member of a road crew on the Chico Turn who was performing switching at Chico and the Airport. His claim for separation of the road and yard work constitutes the basis for wanting to be paid twice for doing the work.

Thirdly, the Carrier maintains that the amount of time the Claimant spent in switching at Chico and the Airport did not amount to four hours or more within each 24 hour period for six consecutive days prior to April 1, 1977. The Carrier stated that when work fell off at Chico and the Airport in 1942, the parties agreed to the discontinuance of the roustabout assignment, and for 36 years the work at Chico has not warranted re-establishing the job.

Under the 1942 Agreement, the parties agreed that two conditions would have to be met before an assignment would be established:

(1) Switching at Chico consisted of four hours or more within a 24 hour period;

(2) It has to occur for six consecutive days.

The Carrier stated that for 34 years there was no dispute over the terms of the 1942 Agreement until the General Chairman, in his August 16, 1976 letter, contended that: (1) all time at Chico from arrival to departure constitutes switching; (2) the term "six

consecutive days" means "six consecutive work days." The Organization later interpreted this to mean successive work days, not necessarily consecutive.

The Carrier stated that the data compiled from Conductors Time Return and Delay Reports and Switching Records for the Chico turn from March 24 through April 3, 1977 clearly show that no crew spent four hours or more switching during the six consecutive days cited in the instant claim.

The Carrier asserted that during the eleven consecutive days, the record shows, only on two days, was time spent on switching four hours or more. On nine dates, it was less than four hours. The Carrier stated the Organization's position that all time spent at Chico from time of arrival to departure, should be counted as switching is not supportable. It stated, for example, if a crew arrived at Chico at 7:00 P.M. and spent 15 minutes switching one car, waited at Chico for four hours, switched two more cars for 30 minutes, departing Chico at midnight, the Organization would contend the Claimant spent five hours switching whereas he had only spent 45 minutes. The Carrier stressed that the 1942 Agreement was negotiated to eliminate a crew for minimal switching, and not to add a crew unless actual switching amounted to four hours or more.

The Carrier stressed that the Organization's argument, vis a vis, "six consecutive days", falls of its own weight. Six consecutive days means one day following the other in regular order without interruption. Consecutive and successive are not the same. It further stressed that the Chico Turn is assigned in each seven day period to work five consecutive days and have two consecutive days off in each seven day work week. It

added that work days in a work period are not consecutive with the work days in the prior workweek or the following work week because of the two days off each workweek. Consequently, the Organization's attempt to substitute "six consecutive work days" for the phrase "six consecutive days" becomes meaningless because there are no "six consecutive work days" involved in the present dispute.

Findings: The Board, upon the entire record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the meaning of the Railway Labor Act; that the Board has jurisdiction over the dispute, and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds the Carrier's contention well founded that the claim has been untimely filed and therefore is barred under the Time Limit on Claims Rule. The Board finds the Organization's letter dated August 16, 1976constituted a claim for the institution of a yard or roustabout assignment at Chico. The letter stated, among other things:

> "In the interim we are instructing our people to submit time claims daily on behalf of first out extra man, or first out emergency men and senior demoted men to cover loss of earnings account Chico Yard job not being bulletined or assigned."

The Board finds that this is a full blown claim. The record shows the Carrier took issue with the Organization in its reply letter dated August 20, 1976, specifically on the matters of "actual time consumed" in switching and "six consecutive days."

The Organization apparently took no further action until Claimant R. D. Block, an extra board engineer, who was called for service on April 1, 1977, and filed a time slip for 100 miles for loss of earnings for the Carrier's alleged breach of Memorandum Agreement No. 6, dated July 29, 1942. This was the specific subject matter raised in the Organization's letter August 16, 1976, for which it was instructing its members to file claims.

The Board finds that the subject matter of the claim was set forth in August 16, 1976 letter but was not perfected or consummated until April 1, 1977. This was too late. The parties have mutually agreed to file claims within 60 days from the date of occurrence on which the claim is based. The record shows that the Organization did not act within 60 days from August 16, 1976, and therefore the claim is barred, and must be dismissed.

Award: Claim dismissed.

Jacob Seidenberg, Chairman and Neutral Member

W. A. Hirst, Employee Member

R. R. Gentry, Carrier Member

December 15, 1978