

PUBLIC LAW BOARD NO. 2678

Docket No. 32
T 40502/1374
Case No. 33491
Award No. 17

PARTIES TO THE DISPUTE:

United Transportation Union
General Committee of Adjustment-C&T

and

The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

Claim of Conductor N.J. Cimini, Flagman M.T. Scahill and
Headman W.E. Dunkle for one yard day on January 31, 1977.
Claim No. AC-C-60547.

OPINION OF BOARD:

In this claim, as in those presented Award No. 12 (Docket No. 27, et al.), Claimants allege that they, as a road crew, were required to perform yard work. Specifically, Claimants allege they were required to shove a train from a point inside Akron Yard switching limits to J.O. Tower, another point inside the Yard switching limits. Carrier local management, however, insists that the move was to Milepost 15, a point outside the Yard limits. For reasons explained in Award No. 12, this is a critical fact which would be dispositive of the claim. The present record does not permit any resolution or determination of that fact. Absent speculation the Board is powerless to resolve such patent conflicts of fact. See Awards 1-20587; 1-21074; 1-21924; 1-21321. The evidentiary standoff on this point is fatal to the Organization which, as the moving party, had the burden of proof on each material aspect of its claim. When challenged by Carrier on this crucial fact, the Organization

was put to its proof. If the Organization had evidence which could have resolved that deadlock, it should have made it a matter of record in handling on the property. Given the state of the present record, we have no alternative but to dismiss the claim.

AWARD

Claim dismissed.

A F White

A. F. White, Employee Member

[Signature]

~~Carrier~~ Carrier Member

[Signature]

Dana E. Eischen, Chairman
and Neutral Member

Date: 3/25/81