

PUBLIC LAW BOARD NO. 4886

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY
TO)
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claiming one (1) basic day at the yard rate of pay for S. L. Dunn (SS No. 522-35-9670) for date of July 17, 1995. Claiming one (1) basic day at the yard rate of pay for S. L. Dunn (SS No. 522-35-9670) for date of July 18, 1995. The claim is being made account S. R. Dunn was regularly assigned to the Roanoke Terminal extra list on the two above dates and should have been called as Pilot on the Brandt. The Brandt performed service on Roanoke Terminal on July 17 and 18, 1995 that requires a Pilot when used in yard service. There was no Pilot used on this equipment on either of the dates.

FINDINGS: This Public Law Board No. 4886 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the Organization has filed claims for the first out available yard foreman on dates that a Brandt truck was operated on-rail within Roanoke Terminal.

The Carrier describes the Brandt truck as a hybrid truck tractor vehicle equipped with a flat bed mounted with a crane, modified with retractable rubber tire wheels and steel rail wheels that enable it to be operated either on highways or standard gauge rail lines. The truck is equipped with a drawbar and is capable of moving freight cars. The Carrier points up that the driver of the Brandt truck is required by law to have a CDL truck license and perform routine maintenance on the truck.

At the outset the Carrier contends that train and engine service personnel are not required to be employed to operate or pilot the Brandt truck. The Carrier's thrust in this vein is that this is new technology, and no craft has an exclusive right to operate this vehicle.

The Carrier further points up that the truck is operated both on and off rail. The Carrier states that because the truck is capable of sustained highway speeds, it is not transported on a flatbed or trailer, but rather it is driven by highway from one work site to the next work site.

The Carrier further argues that even if the Brandt truck was considered a self-propelled vehicle under the rules, it did not

perform service which would require a yard foreman pilot. The Carrier contends that on the claim dates the Brandt truck operated from Roanoke Terminal into road territory, and a pilot is not required when self-propelled machines merely traverse yard territory without actually performing work.

The Carrier has cited other examples when a pilot is not required on self-propelled equipment, such as, when operated without cars, when handling or switching non-revenue cars in connection with work to be performed, or operating in confined areas, and when operating in road territory under a Track Warrant.

The Organization relies primarily on Article III of the June 25, 1964 5-OPS National Agreement. The Organization contends that the Brandt truck falls squarely within the parameters of the self-propelled rule.

The Organization also points up that the Brandt truck is on-rail, has a drawbar, is able to move freight cars, and handled more than two cars exclusively within switching limits while performing maintenance of way work. The Organization vehemently disagrees with the Carrier's positions as to why employees are not required to man the Brandt truck.

The Board has studied the evidence of record, and it appears to the Board that the general character or nature of the truck is relevant, and we must look at the intended use of the Brandt truck. As equipped, the Brandt truck comes squarely within Article III of the 1964 5-OPS National Agreement.

The Carrier has cited a number of awards to support its position. The Carrier relies upon Award No. 6 of Public Law Board No. 972, Award No. 9 of Public Law Board No. 2760, Award No. 68 of Public Law Board No. 1324 among others.

The Board finds that if the service of the Brandt truck had been as outlined in the Carrier's position cited above, for instance, operating in road territory under a track warrant, the claims would have been denied.

However, this Board will sustain these claims because the Organization's oral argument is more persuasive that the Brandt truck was used to move more than two cars from which ties were unloaded exclusively within Roanoke Terminal.

AWARD: Claim sustained.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

Preston J. Moore
Preston J. Moore, Chairman

W. R. Eubanks
Union Member

L. P. Berghma
Carrier Member

DATE: November 21, 1996

Carrier File: DT-ROY-96-2
Org. File C-96-1 (S-1)