PUBLIC LAW BOARD NO. 5483

PARTIES	UNITED TRANSPORTATION UNION	)	
		)	AWARD NO. 31
TO	AND	)	
		)	CASE NO. 31
DISPUTE	PADUCAH & LOUISVILLE RAILWAY, INC.	)	

STATEMENT OF CLAIM:

Claim of Various Conductors and Brakemen, Paducah, KY, for one (1) additional day's pay, at the Local rate of pay, each date, on various dates, when required to perform work of Road Switcher service within Paducah, KY, Terminal, while assigned to Local Freight service.

HISTORY OF DISPUTE:

On November 1 and December 9, 1996, March 29, 1997 and July 15 and 17, 1997 Claimants held assignments in local freight service working into or out of the Paducah, Kentucky Terminal. On each date Claimants were instructed by the Carrier to perform yard work at Paducah. Claimants complied with the instructions, and the claim in this case followed.

The Carrier denied the claim. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimants, were given due notice of the hearing in this case.

By way of background, prior to the Carrier's formation in 1986 its territory was part of the Illinois Central Gulf Railroad (ICG) known as the Kentucky Division. In 1986 that territory was purchased from the ICG and became the Carrier. The Organization and the Carrier negotiated a schedule agreement covering Conductors and Brakemen the pertinent portions of which changed the basis for compensation from mileage and arbitraries to a daily and hourly rate of pay higher than the basic pay on the ICG. The agreement also reflected a change with respect to the performance of yard service. On the ICG that service had been performed by yard crews. Under the schedule agreement between the Carrier and the Organization yard service was to be performed by road switcher assignments.

Prior to June 14, 1996 the Carrier maintained three road switcher assignments at Paducah. On that date the Carrier abolished one of the three assignments and thereafter used local freight assignments to perform some general switching duties within the terminal limits of Paducah including the servicing of industrial customers. By so doing

the Carrier was able to utilize twelve hour local freight assignments at straight time pay rather than one of the remaining eight hour road switcher assignments at overtime pay.

The Organization's theory in support of the claim in this case is that Claimants performed two classes of service on the claim dates and therefore are entitled to the additional compensation sought in the claim. Specifically, the Organization argues that Claimants were assigned to local freight service on the claim dates but that the work they were required to perform in the Paducah Terminal constituted yard service. In support of its position the Organization cites Rules 50 (Rates of Pay) and 15 (Work Week of Assignments) and Letter No. 3 of the applicable schedule agreement.

At the outset the Carrier argues that the claim in this case as well as the time slips for the dates involved are impermissibly vague and imprecise and thus must be dismissed. With respect to the merits the Carrier emphasizes that there are no switching limits on this property and argues that there are no restrictions in the applicable schedule agreement dividing work assignments among different crews. Accordingly, urges the Carrier, the Organization has failed to sustain its burden of proof which requires that the claim be dismissed.

After a thorough analysis of the claim in this case and the respective time slips for the claim dates upon which it is based, we cannot agree with the Carrier that the claim or the time slips are so vague and imprecise as to require dismissal. The claim specifies the basis therefor, i.e., Claimants' performance of road switcher service while Claimants were assigned to local freight service. All time slips for the claim dates except July 17,

1997 clearly state that the basis therefor is Claimants' performance as a local freight assignment of yard switching in violation of Rule 15 of and Letter No. 3 of the applicable schedule agreement. The time slip for July 17 states that it is for the performance of switching in the Paducah Yard and describes the yard work allegedly performed. The time slips for November 1, 1996 and March 29, 1997 also detail the yard work allegedly performed. The time slip for July 15, 1997 indicates that there was a report attached thereto describing the yard work allegedly performed. However, the record does not contain that report.

Whether a claim is defectively vague or imprecise depends upon the terminology of the claim and the supporting data. In this case we believe the terminology of the claim and the supporting time slips is clear and fairly apprized the Carrier of the nature of the claim and the alleged basis therefor.

Rule 50 provides different daily and hourly rates of compensation for employees in local and express freight service on the one hand and road switcher service on the other. Moreover, the rule provides that all time worked in road switcher service in excess of eight hours shall be paid for as overtime. While neither Rule 50 nor any other rule cited to this Board provides that local and express freight service is a twelve hour assignment beyond which overtime is to be paid, the parties agree that such is the case.

Rule 15(f) provides that "[T]he Carrier shall not abolish or annul road switcher assignments and operate or establish local assignments in lieu thereof subject to the provisions of Letter No. 6 dated July 10, 1986."

Letter No. 6, now Letter No. 3 to the current applicable schedule agreement, confirmed the understanding ". . . that the Carrier does intend to utilize road switchers in lieu of yard engines at Paducah and Louisville." The letter also provided that three specified road switchers would be converted to local service but that beyond those three ". . . the Carrier will not replace road switchers now operating on the ICG or additional road switchers to be established on the P&L Railway with local assignments."

Thus, while the applicable schedule agreement may not contain specific switching limits or reserve specific work to any class of service, the agreement clearly distinguishes between local/express service on the one hand and road switcher service on the other. Rule 50 provides different daily and hourly rates of pay for both. Rule 50 also effectively provides that road switcher assignments shall work eight hours. The agreement further provides that local/express freight assignments work twelve hours. Rule 15(f) clearly contemplates that the Carrier will not substitute local freight assignments for road switcher assignments which from the Carrier's inception of its operations have been utilized to perform yard service. Additionally, the Carrier's Timetable No. 2 effective January 1, 1996 sets the "Yard Limits" for Paducah Yard between MP 221.0 and MP 226.0.

We believe the record in this case forces the conclusion that what the Carrier did on the claim dates with respect to the involved local freight assignments was to force them to perform two classes of service under the applicable schedule agreement. In the final analysis we must conclude that the Organization has sustained its burden of proof

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with respect to the claim in this case, that the claim has merit and that the compensation sought by the claim is appropriate.

AWARD

Claim sustained.

The Carrier will make this award effective within thirty days of the date hereof.

William E. Fredenberger, Jr.
Chairman and Neutral Member

J. D. Shepherd
Carrier Member

B. R. Wigent
Employee Member

DATED:
8-4-99