

AWARD NO. 9
CASE NO. 9

PUBLIC LAW BOARD NO. 5737

PARTIES : UNITED TRANSPORTATION UNION
TO :
DISPUTE : CSX TRANSPORTATION, INC. (FORMER WESTERN MARYLAND RR)

STATEMENT OF CLAIM:

Are WM Engineers entitled to the \$15.00 "special pay differential" as provided for in Side Letter #12, November 1, 1991, as a result of PEB No. 219, when working with a B&O Ground Service Crew?

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon. A third party in interest notice was given to the General Committee of Adjustment (GCA) of the United Transportation Union (UTU) for employees which it represents on the former Baltimore & Ohio System (B&O) of CSX Transportation, Inc. (Carrier). The GCA for the B&O filed a written statement on the issue in dispute, and thereafter participated in hearings before the Board.

The question at issue calls for a determination as to whether engineers on the former Western Maryland Railroad (WM) property of the Carrier (represented by the GCA of the UTU party to this dispute) are entitled to a pay differential when they work with a B&O ground crew within the meaning and intent of Side Letter #12 of the November 1, 1991 UTU National Agreement.

Side Letter #12 was included in the 1991 UTU National Agreement as one of several implementing documents related to the adoption of the Report and Recommendations of Presidential Emergency Board No. 219 (PEB No. 219). This Letter makes provision for a special pay differential for "eligible" engineers when working without a fireman and, in addition, working with ground crew members who receive productivity funds as "crew consist protected trainmen." Entitlement to the special pay differential differs for work performed prior to as opposed to on and after November 1, 1994.

Side Letter #12 to the November 1, 1991 UTU National Agreement reads in part here pertinent as follows:

The provisions of the Report and Recommendations of PEB No. 219, as clarified and modified by the Special Board, providing for a pay differential for engineers, shall apply to employees when working as engineers on railroads where the United Transportation Union has been

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recognized or has been certified by the National Mediation Board as the authorized bargaining representative for the engineer craft, as set forth below:

Section 1 - Payments

(a) Effective July 29, 1991, a differential of \$12.00 per basic day in freight and yard service, and 12 cents per mile for miles in excess of the number of miles encompassed in the basic day in freight service, will be payable to eligible engineers working assignments without a fireman provided the conditions described below are met.

(b) Effective January 1, 1995, such differential will be increased to \$15.00 per basic day, and to 15 cents per mile for miles in excess of the number of miles encompassed in the basic day.

Section 2

(a) Under the applicable agreement governing the consist of train crews:

(i) a member of the train crew is entitled to receive a productivity fund, or per-trip payment in lieu thereof, and

(ii) the carrier is required to make a productivity fund payment for that trip or tour of duty.

(b) The engineer must have:

(i) an engineer's seniority date no later than the date that determines eligibility for "protected employees" receiving productivity fund payments in that territory, or

(ii) been a "protected employee" under a crew consist agreement, and was subsequently promoted to engineer on the same railroad.

Section 3

Prior to November 1, 1994, the special pay differential will continue to be paid to otherwise eligible engineers, notwithstanding the provisions of any agreement any carrier may enter into subsequent to the date of this letter to eliminate productivity funds for crew consist protected trainmen pursuant to a crew consist agreement or to substitute "up-front" allowances in lieu thereof. On or after November 1, 1994, engineers will

be eligible for the special pay differential only if they meet the conditions set forth in Section 2 above.

Section 4

This Side Letter is not applicable on a carrier that has an agreement ...

Material to a consideration of the issue here in dispute is the fact that on June 2, 1993 the Carrier and its employees represented by the UTU on the former S&O/B&OCT significantly changed the then existing crew consist agreement so as to permit a reduction of train crew members to one conductor. The agreement is commonly known as "The Conductor-Only Agreement."

Attachment 1 to the Conductor-Only Agreement is entitled: "Signing Bonus and Special Allowance/Productivity Fund Buy Out." It provides, in Paragraph "A", that all protected employees receive a signing bonus of \$23,000. This signing bonus "may be taken as a lump sum cash payment or diverted in three installments to the Employee's 401(k) account for calendar years 1993, 1994, and 1995."

Attachment 1 further provides, in Paragraph "B", that a protected employee "may elect to buy out his Special Allowance and his share of the Productivity Fund" under a schedule of payments. This schedule of payments calls for a \$20,000 allowance to be paid upon selecting the buy-out option, and with a "cash balance pension plan" established under the Employee Retirement Income Security Act of 1974 (ERISA) so as to provide each participating employee with certain vested amounts of money, based upon years of train service, and to be paid upon termination of employment as a result of retirement or otherwise. The vested amounts shown on the schedule range from \$6,524.00 for one year to \$163,100.00 for 25 years of service.

Paragraph "B" of Attachment 1 further reads in part as follows:

(3) (a) The Special Allowance and credit for shares of the Productivity Fund will cease for those employees electing the buy-out option upon implementation of the Rule. The \$20,000 allowance shall be paid within thirty days of implementation of the Rule.

(b) Upon implementation of this Rule, Productivity Fund 6601 will be closed. The monies in Fund 6601 will be held for distribution under existing agreement provisions. A new Productivity Fund 6601(a) will be established for the remainder of the 1992/1993 fiscal year, with distribution governed by the provisions of Section 14 of CSXT Labor Agreement 4-

064-93.

(4)(a) On the effective date of the Rule, the Carrier's contribution under Section 14 - Productivity Fund will be reduced by the percentage of the eligible employees electing to buy out their share of the Productivity Fund. For example, if 80% of the eligible employees buy out [of] the fund, the \$48.25 will be reduced to \$9.65.

The following formula will be used to calculate the adjusted contribution: . . .

It is unquestioned that the vast majority of B&O/B&OCT protected employees elected to buy out their shares of the Productivity Fund and thus their rights to the crew consist Special Allowance.

It is the position of the Carrier that the Conductor-Only Agreement constitutes an action contemplated within the meaning and intent of Section 3 of Side Letter #12 to the 1991 UTU National Agreement. That is, an agreement made subsequent to the November 1, 1991 UTU National Agreement to "eliminate" or buy out the productivity fund.

The Carrier thus contends that it was only obliged by Section 3 of Side Letter #12 to have continued its payment of the special differential until November 1, 1994. It says this on the basis of that language of Section 3 which provides such pay differential continue to November 1, 1994 "notwithstanding the provisions of any agreement . . . subsequent to the date of this [side] letter [November 1, 1991] to eliminate productivity funds for crew consist protected trainmen or to substitute 'up-front' allowances in lieu thereof."

At the same time, the Carrier says that pursuant to the remaining provisions of Section 3 of Side Letter #12 that it ceased payment of the special differential on or after November 1, 1994 on the basis that the June 2, 1993 Conductor-Only Agreement eliminated the payment of productivity funds to ground service crews and that such action, in turn, resulted in engineers not meeting the conditions set forth in Section 2 of Side Letter #12 so as to be eligible for the special differential.

The Carrier therefore says that it made a proper determination to cease payment of the special pay differential to B&O Engineers who worked with B&O train crews that had elected to buy-out their Productivity Fund and Short Crew Allowance, and, as concerns the dispute here at issue, to likewise cease such payment to WM Engineers who worked with B&O ground service crew members who had elected to buy-out their shares of the Productivity Fund and their rights to the Short Crew Allowance.

the Brotherhood of Locomotive Engineers (BLE). Side Letter #8 of the BLE National Agreement is identical to the language contained in Side Letter #12 of the 1991 UTU National Agreement.

In this respect, it is worthy of note that the BLE made the following request for interpretation to the Special Board:

BLE Request No. 11

Did the PEB intend that a Carrier would be obligated to continue making the required payments to its engineers, even if the Carrier agreed to "buy out" its train service crew members' right to receive future payments from a "productivity fund"?

In argument involving the above request, the BLE related to Special Board No. 102-29 that during bargaining and mediation sessions after PEB No. 219 had issued its Report and Recommendations that "the Carriers adamantly insisted upon an 'interpretation' of the PEB Report that would ... allow the Carriers to immediately and permanently evade their entire obligation to make per-trip payments to engineers through the expedient of 'buying-out' their crew-consist agreements with train service employees." The BLE said that under such a buy-out scheme, the Carriers would make a large lump sum payment (\$50,000, \$75,000, or more) to each train service employee covered by existing crew consist agreements in consideration for which the Carriers would obtain the right forever to cease making payments to any "productivity fund." In concluding its statement to the Special Board the BLE said:

In sum, the BLE submits that the PEB clearly intended to require the Carriers to continue their per-trip payments to eligible engineers, even if the Carriers were successful in their efforts to "buy-out" the existing "productivity funds" by making alternative financial or other arrangements with the affected trainmen. We urge the Special Board to clarify that this was, in fact, the intention of the PEB.

In response to the above clarification request, Special Board No. 102-29 ruled:

No. The PEB intended that the engine service employees would receive equalization payments only as long as productivity fund payments were made to train service employees.

Section 3 of Side Letter #12 is also significant in that it prescribes that subsequent to November 1, 1994 engineers will be eligible for the special pay differential only "if" they meet the conditions which the parties set forth in Section 2 of Side Letter #12. These jointly related conditions are that: (1) a member of the train crew is entitled to receive a productivity fund;

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and, (2) the carrier is required to make a productivity fund payment for that trip or tour of duty.

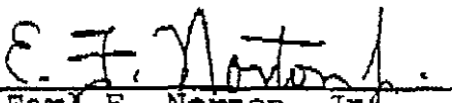
In the case before us, no B&O ground crew member is shown to have received or been entitled to "a productivity fund or per trip payment" because, as indicated above, such payment ceased to be made after they elected the Special Allowance/Productivity Fund Buy Out.


In the light of the above considerations and study of the rather extensive arguments of the parties, the Board finds that WM Engineers are not entitled to the continued payment of the \$15.00 special pay differential provided for in Side Letter #12 which attached to the November 1, 1991 UTU National Agreement when working with a B&O Ground Service Crew that had elected, pursuant to the provisions of Attachment 1 of the June 2, 1993 Conductor-Only Agreement, to buy OUT his or her Special Allowance and his or her share of the Productivity Fund.

AWARD:

The claim or question at issue is answered in the negative.


Robert E. Peterson, Chairman
and Neutral Member


Earl F. Norton, Jr.
Carrier Member


Robert J. Will
Organization Member

Jacksonville, FL
May 29, 1996