UTU 59547/600

MGT. NO. 4(93-771)

PUBLIC LAW BOARD NO. 5907

Case No. 4
Award No. 4

United Transportation Union	)	PARTIES
	)	TO
CSX Transportation, Inc.	)	DISPUTE

STATEMENT OF CLAIM

Claim of Conductor L.R. Bartlett (010202) and Brakeman A.E. Boor (517491) for one penalty day in addition to their earnings on December 5, 1992 account of performing yard service within Cumberland Terminal.

FINDINGS

This Board finds the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due and proper notice of hearing thereon.

Claimants worked in pool service between Baltimore and Cumberland, Maryland. On the claim date Claimants arrived at Cumberland, their final terminal, and yarded their train on Track No. 2. After yarding its train, the crew was instructed to take its three engines to the East Bound Engine Lead, and pick up two more engines. After picking up the engines, the crew was required to place all five engines on the Shop Service Track. At the time the work was performed five yard engines were on duty.

The Organization argues that the work of picking up the additional engines and placing them on the shop tracks is a violation of the Schedule Agreement, and that the October 31, 1985 National Agreement as amended by PEB 219 does not permit such work to be performed without additional compensation.

The Carrier argues the opposite. It avers such work is permissible under the terms and conditions of the National Agreement. It also argues that there is no basis for the penalty day as claimed. It takes the position that the work performed was an engine exchange and additional payment for such work has been eliminated.

The Carrier has the right to require road crews to place their engines on shop tracks after the conclusion of the road trip. However, when the Claimants were required to pick up additional locomotives and move them along with their consist, they were hostling engines that were not part of their assignment. As such, the Agreement was violated. This decision is

PUB NO. 5907
AWD NO. 4

consistent with Award No. 5978 of Special Adjustment Board No. 18, Award No. 44 of Public Law Board No. 4069, and Award No. 34 of Public Law Board No. 4975.

As to the argument that the penalty claim is not justified, this Board finds the position taken by the Carrier and the awards cited do not fit this case.

AWARD

Claim sustained. Carrier will comply with this Award within 30 days from its date.

R.G. Richter, Chairman

H. S. Emerick (DISSENT ATTACHED)
H. S. Emerick, Carrier Member

J. T. Reed
J.T. Reed, Employee Member

Dated OCTOBER 10, 1997

CARRIER MEMBER DISSENT TO AWARD NO. 4
PUBLIC LAW BOARD NO. 5907

We fail to understand how this or any other Board, for that matter, could reach any conclusion other than denying the claims for penalty or arbitrary payment to road crews for changing engines (picking up engines) during their tour of duty. There was no mention in that rule of "in connection with their own assignment." The record further showed that prior to October 31, 1985, the former B&O had a rule for and a history of paying an arbitrary for the work performed in this case – increasing power. The record also showed that the arbitrary for this specific work was eliminated under the provisions Article IV, Section 4 of the October 31, 1985 National Agreement. Pertinent provisions read as follows:

> "(a) Effective November 1, 1985, all arbitrary allowances provided to employees for exchanging engines, including adding and subtracting units, preparing one or more units for tow...are reduced..."
>
> "(c) Effective July 1, 1987, all arbitrary allowances provide to employees for performing work described in paragraph 9a) are eliminated."

The Board's reliance on the term "in connection with" in this case is improper and contrary to the intent of the Agreement language. Clearly the negotiations of the 1985 National agreement intended to relax restrictions and simplify pay procedures by continuing the work and eliminating any special payments for that work, a negotiated exchange for an attractive pay and benefits package.

This award, if followed, would obliterate a right the carrier had for decades and for which an arbitrary was paid (prior to July 1987). This work would now become a violation of the agreement for which a penalty day (or more) may be exacted. This is clearly contrary to the intent of the 1985 National Agreement and others that have increased wages and benefits while relaxing work.

For these reasons, this award cannot be considered as having precedent value as it not only would improperly restrict this carrier's operations, but would result in an unwarranted step backwards.

H. S. Emerick
Carrier Member