NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6420

BROTHERHOOD OF LOCOMOTIVE ENGINEERS	)
	) Case No. 5
and	)
	) Award No. 3
DULUTH, MISSABE AND IRON RANGE RAILROAD COMPANY	)

Martin H. Malin, Chairman & Neutral Member
J. A. Cassidy, Employee Member
M. S. Anderson, Carrier Member

Hearing Date: June 6, 2001

STATEMENT OF CLAIM:

Engineer K. J. Stauber, et al. is seeking one hill minimum days pay for the Wisconsin Central switching cars on the Tomco siding at South Itasca (See Employee's Exhibit # 13) If switching needed to be done on our property then Engineer Stauber and his crew, which was on duty at the time of the switching should have done the work.

FINDINGS:

Public Law Board No. 6420, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The instant claim arises out of incidents in which crews of the Wisconsin Central (WC) allegedly used the Tompco and Parkland sidings to switch cars on August 9, 1999, and September 16, 1999. The Organization maintains that these actions violated the Scope Rule of the May 9, 1999 Agreement. The Scope Rule provides:

> Except as otherwise provided herein, all trains and locomotive in all classes of service on trackage of the DM&IR shall be operated by employees represented by the duly authorized representative of locomotive engineers employed by the DM&IR, currently the Brotherhood of Locomotive Engineers, or by engineer trainees working under direct supervision of such employees.
>
> This rule shall not apply if the carrier's operations are suspended in whole or in part due

to a labor dispute; nor does it disturb any existing joint operating, trackage rights or interchange arrangement under which foreign line crews handle train crews on DM&IR trackage.

This rule is not intended to infringe upon the established work rights of any other craft on the DM&IR. nor restrict or diminish the existing rights of management.

The Organization contends that what occurred on the sidings was switching and fell outside of the existing interchange agreements between Carrier and the WC. Carrier maintains that what occurred fell within the existing joint operating and interchange agreements with the WC. Carrier urges that all movements of the WC crews were in connection with their own trains and did not result in any lost work opportunities for DM&IR crews. Carrier characterizes the claims as claims for alleged breaches by WC of its interchange and joint operating agreements with Carrier and, therefore, falling outside this Board;s jurisdiction.

Initially, we observe that we have jurisdiction over the instant claims. The Scope Rule covers "all trains and locomotive in all classes of service on trackage of the DM&IR ." Thus. the Rule defines the scope not in terms of what carrier's train is being operated but in terms of where the train is being operated. If the train or locomotive is operated on "trackage of the DM&IR." its operation is scope covered work unless it is covered by the exceptions set forth in subsequent parts of the rule.

Essentially, Carrier's position is that the incidents at issue did not involve scope covered work because the WC crews were operating pursuant to joint operating agreements between Carrier and the WC. Thus, the joint operating agreements come into play not because the claims are for alleged breaches of those agreements but because Carrier is asserting them as a defense to the claimed breaches of the Scope Rule. The Board certainly has jurisdiction over the claimed breaches of the Scope Rule and, to the extent necessary to resolve those claims, may consider the joint operating agreements.

It is not clear whether Carrier is maintaining that the movements by the WC crews were made pursuant to joint operating or interchange agreements that were in effect on May 19, 1999, or were made pursuant to new agreements or amendments to existing agreements that, under the Scope Rule, Carrier had a management right to enter. The Organization concedes that if the movements were made in accordance with agreements in existence on May 19, 1999, they did not violate the Scope Rule. It urges, however, that any movement not authorized by joint operating, trackage or interchange agreements in existence on May 19, 1999, violates the Scope Rule.

We need not decide whether the Scope Rule's provision that it does not "restrict or diminish the existing rights of management" allows Carrier to amend an existing agreement with another Carrier or enter into a new one and exempt movements made pursuant to such agreement from Scope Rule coverage. It is clear that Carrier relied on a purported agreement with the WC as a defense to the claims, the Organization requested copies of all such agreements and Carrier

failed to provide such copies. If Carrier intends to rely on a joint operating, trackage or interchange agreement in its defense, it must make copies of the agreement available to the Organization upon request and must incorporate such copies in the record of handling on the property. Its failure to do so in the instant case leaves us no choice but to sustain the claims.

AWARD

Claims sustained.

ORDER

The Board, having determined that an award favorable to Claimants be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto

Martin H. Malin, Chairman

M. S. Anderson
Carrier Member

J. A. Cassidy
Employee Member

Dated at Chicago, Illinois, October 31, 2001