

Award 130
Case No. None
BU-8246-33

SPECIAL BOARD OF ADJUSTMENT NO. 355

Parties: THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 130

STATEMENT
OF CLAIM:

1. Carrier violated the Agreement between the parties when it required or permitted an employee not covered by said Agreement to copy a train order at Smith Road, Ohio on January 22, 1961.
2. Carrier shall be required to compensate Operator R. D. Hodges in the amount of a day's pay (eight hours) on January 22, 1961.

FINDINGS:

The claim made in this Docket is similar to that made in Docket No. 26, in which a denial award was made by this Board.

The presentations and argument offered here are in greater depth.

For example, it is asserted by the Organization and not denied by the Carrier, that the train here involved in "carried on the 2656 and Dot reportsSwitching trains are not shown on such reports."

In rebuttal of Carrier reliance on the fact that "the crew on this train is paid the local rate of pay under the conversion rule" (of the Trainmen's agreement), the Organization offered in evidence letters in two similar claims involving identical trains and circumstances from Carrier's Manager of Labor Relations acknowledging

(a) "that the basis of conversion did not in fact constitute this a switching crew, therefore the claim in this case will be allowed and instructions are being issued accordingly."

(b) ".....the copying of the train order involved would be permissible if the crew were a switching crew. However, even though they were paid the local freight rates, it would appear this was solely because of the number of pick-ups and set-offs made and that they were not actually engaged in switching. Therefore, the claim in this case will be allowed....."

(c) ".....it is now my conclusion that the crew was not paid the local freight rate because of switching performed

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"but solely on the number of pickups and set-offs. That being the case, the crew was not in fact a switching crew and so did not fall within the permissive exception to the rule. Therefore, the claim in this case will be allowed....."

Irrespective of our Findings in Docket No. 26, the preponderance of the evidence before us here requires a sustaining award. It will be made.

A W A R D

Claim sustained.

/s/Edward A. Lynch
Edward A. Lynch, Chairman

R. K. Anthis/s/
R. K. Anthis
Employee Member

/s/T.S.Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland,
this 31st day of May, 1963.

