

SPECIAL BOARD OF ADJUSTMENT NO. 894

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BROTHERHOOD OF LOCOMOTIVE ENGINEERS :  
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 "Organization" :  
 : Case No. 1518  
 vs. :  
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 CONSOLIDATED RAIL CORPORATION : Award No. 1518  
 :  
 "Carrier" :  
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STATEMENT OF CLAIM

The claim of Engineer P. E. Schilling for payment of one (1) day at yard rate for operating an engine consist without an operative speed indicator on August 13, 1986 at Oak Point, New York, Article G-m-7(j).

BLE File No: F-F-264-752-86  
System Docket No: CRE-9718  
Northeastern Region Case 03-86-M-0312

OPINION OF THE BOARD

On the date of claim, August 13, 1986, the Claimant, Engineer P. E. Schilling, was the assigned Engineer on Traveling Road Switcher assignment WVOP-20, reporting for duty at Oak Point, New York at 7:30 p.m. Claimant was assigned Unit 9508, which was not equipped with a speed indicator. Claimant was also assigned Units 1914 and 1915 as his locomotive consist for August 13. He used these three locomotive units during his entire tour of duty on that date. According to the Organization, Claimant advised Yard Master N. W. Lewis that engine 9508 was not properly equipped with a speed indicator in accordance with the Agreement but Yard Master Lewis ordered Claimant to work with the engines

the way they were for his entire tour of duty. Claimant subsequently submitted a penalty time slip claiming one day of pay for being required to work with an engine that was not properly equipped in accordance with Article G-m-7 (equipment on engines), which states in relevant part as follows:

- (j) Road type locomotives shall be equipped with an accurate speed indicator

Carrier contends that as the express terms of Article G-m-7(j) refer to road type locomotives, it is here inapplicable, and unit 9508 is a yard switching locomotive. According to Carrier, there are no restrictions prohibiting the use of yard engines in road territory or for travelling switcher service. Furthermore, by way of rebuttal, Carrier contends that if Claimant deemed it necessary that he use a road type locomotive that was equipped with an accurate speed indicator on the date of claim, he simply had to request permission to rearrange his locomotive consist so that road freight diesel unit 1914 or 1915 would be the lead unit in his consist. As he did not do this, the Carrier contends that he forfeited any right to this claim. With respect to the matter of additional compensation, Carrier submits that the penalty demanded by the Organization, an additional day of pay, is not authorized by Article G-m-7, and that where no penalty exists in the Collective Bargaining Agreement the Board must first conclude that the Carrier has been guilty of willful and wanton misconduct before assessing such a penalty. In addition, Carrier contends that should some penalty be assessed, in prior Awards sustained claims have resulted in one hour of pay being assessed rather

than the eight hours claimed.

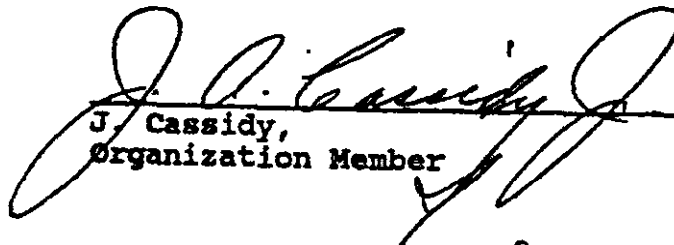
The Organization asserts that the facts in Award Nos. 1336 and 1224 of SBA No. 894 are exactly the same as the facts in the instant case, and that Carrier did not raise any different position on the property for this claim than what was raised in these two previously decided cases. According to the Organization, the principle that was sustained in Award Nos. 1224 and 1336 was clearly justified, and there is no reason why this Board should not issue a sustaining Award in the instant claim. While the Organization had sought to settle this claim with two hours pay, as the case was not settled eight hours pay is the appropriate remedy.


The Board has determined that the claim must be sustained.

This claim is factually similar to that of Special Board of Adjustment No. 894, Award No. 1336. In Award No. 1336, when faced with similar facts, it was determined that because of the type of territory worked the yard locomotive was considered converted to "Road Type Use." Arguments raised by Carrier, both those pertaining to other similar cases and those pertaining to the specific facts of this case, are insufficient to negate the validity of this precedent. Moreover, the Organization's dissent to the remedy in Award No. 1336, and arguments in the instant case, are also insufficient to negate the validity of this precedent. Thus, Award No. 1336 is controlling as to both outcome and remedy. Claimant is therefore entitled to payment of two hours for August 13, 1986.

**AWARD**

Claim sustained for payment of two hours. The Carrier shall comply with this Award within 30 days.

  
J. Cassidy,  
Organization Member

  
~~J. Glass, SR FRIEDMAN~~  
Carrier Member  
Adopted: June 17, 1997

  
S. E. Buchheit,  
Neutral Member