

SPECIAL BOARD OF ADJUSTMENT NO. 894

BROTHERHOOD OF LOCOMOTIVE ENGINEERS :
 :
 "Organization" :
 :
 vs. : Case No. 1519
 :
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 CONSOLIDATED RAIL CORPORATION : Award No. 1519
 :
 "Carrier" :
 :

STATEMENT OF CLAIM

The claim of Engineer T. A. Bender for payment of one day at yard rate for operating an engine consist without an operative speed indicator on December 8, 1986 at Croton, New York, Article G-m-7(j).

BLE File No: F-E-127-752-87
System Docket No: CRE-01060
Northeastern Region Case 03-87-M-0029

OPINION OF THE BOARD

On the date of claim, December 8, 1986, the Claimant, Engineer T. A. Bender, was the assigned Engineer on Traveling Road Switcher assignment WVHC-15, reporting for duty at Croton, New York at 12:01 p.m. Claimant was assigned Engines 9530-9546, neither of which was equipped with a speed indicator. Claimant advised Train Master J. Dziegielewski that the engines were not properly equipped in accordance with the Agreement. Dziegielewski ordered Claimant to work with the engines the way they were for his entire tour of duty. Claimant complied with Dziegielewski's instructions but submitted a penalty timeslip 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, as engines 9530 and 9546 are yard switching locomotives used in traveling road switcher service. According to Carrier, there are no restrictions prohibiting the use of yard engines in road service. 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 for Claimant's claim 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

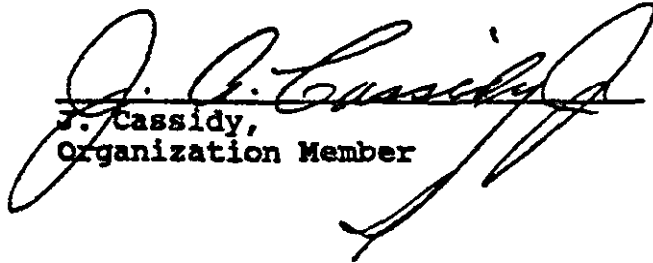
claim. While the Organization had sought to settle this claim with two hours pay, as the case was not settled eight hours pay is the appropriate remedy.


The Board has determined that the claim must be sustained.

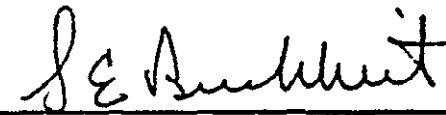
This claim is factually identical to that of Special Board of Adjustment No. 894, Award No. 1336. That Award sustained the Organization's position and awarded Claimant a payment of two (2) hours pay because he was ordered to operate a 9500 series engine which was not equipped with an operative speed indicator. In that Award it was determined that due to the facts and circumstances of the territory worked, the yard locomotive was considered converted to "Road Type Use". Notwithstanding Carrier's dissent to Award No. 1336 and arguments in the instant case, as well as the Organization's dissent to the remedy in Award No. 1336 and arguments in the instant case, this Board finds that Award No. 1336 is controlling of the instant case as to both outcome and remedy. Claimant is therefore entitled to payment of two hours for December 8, 1986.

AWARD

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


J. Cassidy,
Organization Member


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


S. E. Buchheit,
Neutral Member