SPECIAL BOARD OF ADJUSTMENT NO. 894

AWARD NO. 1654

CONSOLIDATED RAIL CORPORATION

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Docket No. CRE-17614 - Claim of Engineer S. T. Phillips for payment of eight hours on November 22, 1992.

STATEMENT OF FACTS: On November 22, 1992, Engineer S. T. Phillips (hereinafter *claimant*) was assigned to the Combination Engineers' Extra List at Altoona, PA, which protects vacancies on road service assignments that operate both east and west of Altoona, as well as yard service vacancies within the Altoona Zone. At 5:00PM on such (November) date, claimant was assigned and reported at Altoona for *straightway through freight service to Harrisburg, PA*. However, after reporting for duty, claimant's original assignment was avowedly changed, he (*sic*) was deadheaded, combined with service, to MP-246 on the Pittsburgh Line, west of Altoona,

where he relieved the crew of Train PIBA-2X. Claimant then operated such train *east* on the Pittsburgh Line, to Harrisburg, registering off-duty at 11:00PM.

For performing such service Engineer Phillips submitted a penalty claim for an 8 hour day, alleging that he had performed *turnaround service, in lieu of the straightway through freight service originally assigned.* Such claim was timely denied and thereafter appealed and handled in the usual manner. Failing to arrive at a mutually satisfactory settlement, the dispute was thereafter submitted to this Special Board of Adjustment (No. 894) for final resolution.

FINDINGS: Under the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

The *material* facts involved in this appeal are not in dispute. At the time Engineer Phillips received his original (assignment) call from crew

dispatch, he appears to have been told that he was going to be utilized in *straight-away freight service*, between Altoona and Harrisburg (Enola Yard). If such "*crew alert*" had been credibly proven to have been otherwise (*i.e. turnaround and/or combined service and deadheading*), then the provisions of Article F-x-1 (Q&A 9) might have dictated a different result.

The affirmative obligations imposed by Article F-x-1 focuses exclusively on the *type of notice* identified in the original call, not what subsequently occurred. Furthermore, if a breach of that provision was intended by the drafters to have been *neutralized* by subsequent occurrences (*i.e.* change from straight-away to turnaround service), such intention would presumably have been clarified in the (interpretative) Questions and Answers that followed.

In our judgment the claimant satisfied his burden of proof to show a contractual breach. We also consider the carrier's defensive focus on management's contractual authority to combine deadheading with any other type deadheading to be tactical and diversionary. Furthermore, it is

axiomatic that a *contractual right*, with no *corresponding remedy* for a breach thereof, is, in practical effect, no right at all.

AWARD: *Claim sustained.* Carrier is directed to implement this award within 30 days of the effective date hereof.

We hereby retain jurisdiction for an elapsed period of six months to ensure the proper interpretation and application of this award.

DON B. HAYS, Neutral Member

S. R. FRIEDMAN, Carrier Member — S R Friedman - Dissent attached

E. W. RODZWICZ, Organization Member

December 20, 1999
DATE

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DISSENT

The majority's decision in the above-noted case is incorrect. The BLE Collective Bargaining expressly contemplates that extra list engineers may have their call and/or working limits changed. In some cases, the mishandling rule (Article G-X-5) is applied when the time of an assignment is changed. In the instant case, the Claimant's assigned train expired under the Hours of Service west of his terminal. Since relief service accrues to the nearest extra list, Claimant was assigned to combine service and deadhead to his outlawed train and then perform straightaway service to his intended final terminal.

The majority's decision appears to be based on the fact that Claimant was not told by the crew dispatcher during the initial call for service that service and deadhead pursuant to Q&A #9 of Article F-X-1 would be required. The Carrier asserted that this type of exigency is precisely contemplated by the aforementioned Q&A, while the majority contends such argument is "tactical and diversionary." The majority's position is not supported by any specific contract rule nor is one cited in the decision. Therefore, the decision appears to be based on equitable considerations which are not warranted in this matter and the Carrier will not recognize the Award as precedential.

S. R. Friedman, Carrier Member