

SPECIAL BOARD OF ADJUSTMENT NO. 894

BROTHERHOOD OF LOCOMOTIVE ENGINEERS :
 :
 "Organization" :
 : Case No. 1412
 vs. :
 :
 CONSOLIDATED RAIL CORPORATION : Award No. 1412
 :
 "Carrier" :
 :

STATEMENT OF CLAIM

System Docket CRE-11821

Claim of Engineer J. E. Adimey for payment of one (1) hour and five (5) minutes additional Final Terminal Delay (FTD) payment while covering Train OPSE-8 on March 8, 1988 in accordance with Article R-c-2.

OPINION OF THE BOARD

On the date of claim, Claimant was the engineer on train OPSE-8 operating in through freight service from Oak Point, New York to Selkirk, New York. On his time card for the day, Claimant reported his engine reaching the final terminal delay point, CP-SK, at 5:50 a.m. According to Carrier, Claimant's train arrived at the advanced signal governing movement to CP-SK at 5:50 a.m., but did not actually pass through CP-SK until 8:11 a.m. Claimant signed off duty at 8:30 a.m. Claimant then submitted a claim for one hour forty minutes final terminal delay payment. Carrier ultimately granted Claimant payment of 35 minutes final terminal delay, but denied the claim for the remainder one hour and five minutes. The Organization then

placed that portion of the claim before this Board.

Article R-c-2, Final Terminal Delay of the Agreement states in part as follows:

(a) In freight service, final terminal delay shall be computed from time engine reaches the designated main track switch connection with the yard track or signal governing such connection to time of arrival at point of final release; and for following freight trains destined to that yard when held within yard limits by such preceding train. After the lapse of 1 hour, final terminal delay shall be paid for on the minute basis at the regular hourly rate, according to weight of engine on drivers, up to the period when overtime commences; time thereafter shall be paid for as overtime.

Question and Answer No. 1 of the agreed to Questions and Answers for Article R-c-2 states:

1. Question - Re (a). What is intended by the phrase "and for following freight trains destined to that yard when held by such preceding train"?

Answer - This means that should trains be held by a preceding train which has reached the designated main track switch connection with the yard track or signal governing such connection, final terminal delay shall be computed for the following freight trains after the lapse of one hour from the time held. However, trains held for any other reason would not qualify for final terminal delay.

Article V - Final Terminal Delay, Freight Service of Award of Arbitration Board No. 458 states in part as follows:

Section 1 - Computation of Time

In freight service all time, in excess of 60 minutes, computed from the time engine reaches switch, or signal governing same, used in entering final terminal yard where train is to be left or yarded, until finally relieved from duty, shall be paid for as final terminal delay; provided, that if a train is deliberately delayed between the last siding or station and such switch or signal, the time held at such point will be added to any time calculated as final terminal delay.

In addition, Letter 3A concerning Section 1 of Arbitration Board No. 458 states as follows:

On the other hand, the Carriers were concerned that the term "deliberately delayed" not be construed in such a manner as to include time when crews were held between the last siding or station and the point where final terminal delay begins because of typical railroad operations, emergency conditions, or appropriate managerial decisions. A number of examples were cited including, among others, situations where a train is stopped; to allow another train to run around it; for a crew to check for hot boxes or defective equipment; for a crew to switch a plant; at a red signal (except if stopped because of a preceding train which has arrived at final terminal delay point and is on final terminal time, the time of such delay by the crew so stopped will be calculated as final terminal delay); because of track or signal maintenance or construction work; to allow an outbound train to come out of the yard; and because of a derailment inside the yard which prevents the train held from being yarded on the desired track, e.g., the receiving track. We agreed that Section 1 did not comprehend such conditions.

The Organization contends that as Claimant's train was at CP-SK at 5:50 a.m., and was held behind other trains, he is entitled to the final terminal delay sought pursuant to the provisions of Article R-c-2. Moreover, the Organization asserts that Carrier has never provided it with a copy of the alleged records demonstrating that train OPSE-8 "was held until trains TV-10 and TV-8B departed Selkirk Yard." The Organization asserts that these trains had no bearing on Claimant's train or the preceding trains that were stopped in front of it, as outbound trains depart via a different yard than inbound trains, and there was simply no room in Selkirk Yard for receiving the inbound trains.

Carrier asserts that as Claimant's train had not actually

reached the final terminal delay point of CP-SK until 8:11 a.m., the provisions of Article V of Arbitration Board No. 458 are not applicable to the instant case. Carrier also contends that as established by Letter 3A, the term "deliberately delayed" in Article V, Section 1 of Arbitration Board No. 458 does not include an inbound train that is being held to allow an outbound train to come out of the yard or to allow another train destined to the same yard to run around the first train.

The Board has determined that the claim must be sustained.

Initially, it must be noted that the Board has not considered the procedural argument originally raised by Carrier. More specifically, Carrier at first argued that the Board may not have jurisdiction to hear this case. Thereafter, without prejudice to its position, Carrier withdrew that argument and requested that the Board render a decision in this case on its merits.

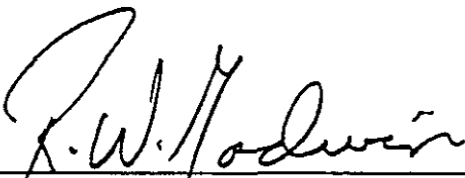
As to those merits, the Organization has persuasively argued that Article R-c-2, when viewed within the context of Article V of Arbitration Board No. 458, provides for payment of FTD if an engineer is held from entering the yard by a preceding train under circumstances such as are here present. More specifically, the Organization has established that Claimant was unable to yard his train because he was stopped behind inbound train TTSE-8, LDSE-7, and PYSE-7 at CP-SK. Although Carrier contends that Claimant's train was held to allow outbound Trains TV-10 and TV-8B to operate through the interlocking onto the main track, the

Board finds insufficient evidence in the record developed on the property to support this contention and Carrier's subsequent conclusion that the claim should be denied.

Accordingly, the Board finds that the claim should be sustained.

AWARD


Claim sustained. Money owed to be paid within thirty days.



R. W. Godwin,
Organization Member



~~XXXXXXXXXXXX~~
Carrier Member



S. E. Buchheit,
Neutral Member

7-24-95