

SPECIAL BOARD OF ADJUSTMENT NO. 894

AWARD NO. 1532

CONSOLIDATED RAIL CORPORATION

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Claim of Engineer D. J. Halligan for payment of one day's penalty on December 7, 1988, account of being required to work with an engine that was not equipped with a toilet. Article G-m-7.

STATEMENT OF FACTS: On December 7, 1988, Engineer D. J. Halligan was assigned on a traveling road switcher (WNCH-20), reporting for duty at New Haven at 10:00AM. His assigned equipment for that task was yard switcher unit 9403, which was not equipped with a toilet. Claimant performed as direct; thereafter he submitted a penalty timecard claiming a day's pay for performing service with a yard switcher that was not equipped

with a toilet. Such claim was timely denied and progressed in the normal manner, subsequently being appealed to this Board for final resolution.

RELEVANT CONTRACT PROVISION: Article G-m-7 - Equipment on

Engines reads as follows:

“(f) All road locomotives shall be equipped with flush or septic type toilets which shall be maintained in a clean sanitary condition.” (Emphasis added)


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 carrier rejects any contractual responsibility, arguing that engine 9403, used by claimant, was a “yard switching locomotive” regularly assigned in “traveler service” and therefore outside the scope of Article G-m-7’s (supra) reference to “road locomotives.” We are cautioned that our jurisdiction is limited and does not include the authority to issue decision which alters the parties’ written word, or to award punitive damages.


As regards the carrier's allegation concerning the application of the specific terms contained in the agreement, we believe such allegation tends to emphasize form over substance. Carried to its logical conclusion, the carrier could essentially nullify its negotiated contractual obligation (provide operative toilets) by the systematic replacement of all "road locomotives" with "yard switchers." The spirit and implied intent of the language is to provide toilet facilities for engine crews or road assignments. Clearly the carrier did not comply with such contractual mandate on the date in question, and there is no allegation or evidence that this was an unavoidable or "emergency" assignment.

As regards the issue of damages, we find substantial support in both the cited railroad awards and other judicial decrees regarding the inseverable correlation between contractual "rights" and "remedies."

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


DON B. HAYS, Neutral Member


P. C. POIRIER, Carrier Member


J. A. CASSIDY, JR., Organization Member

DISSENT ATTACHED


DATE

**CARRIER'S DISSENT TO AWARD NO 1532
OF SPECIAL BOARD OF ADJUSTMENT NO. 894**

This Board has progressed from an award of two hours' pay because the Carrier did not show that the unit in question was a yard locomotive to an award of eight hours' pay when the Carrier went to great lengths to prove that the unit in question was a yard locomotive. Thus, this award reverses the direction already established by this Board not only with respect to whether a penalty is appropriate, but also with respect to the penalty amount for actions which clearly were neither willful nor wanton violations of the Collective Bargaining Agreement. I Dissent.



Peter C. Poirier
Carrier Member