

ARBITRATION BOARD NO. 419

In the Matter of Arbitration Between
BURLINGTON NORTHERN RAILROAD

And

United Transportation Union

Pursuant to Article X of the National
Agreement, dated October 15, 1982
Between the Carriers' Conference Com-
mittee and the United Transportation
Union

FINDINGS AND AWARD

Before: George S. Roukis
Neutral Referee

APPEARANCES:

FOR THE BURLINGTON
NORTHERN RAILROAD

J. J. Ratcliff
W. A. Bell
W. C. Bush
J. W. Carnaham
H. C. Loucks
J. Moore
J. L. Russell
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FOR THE UNITED TRANS-
PORTATION UNION

C. F. Christiansen
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J. H. Rogers
T. O. Ryan
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Pursuant to the procedures of Article X of the October 15, 1982 National Agreement between the National Carriers' Conference Committee and the United Transportation Union, the undersigned was appointed by the National Mediation Board on June 20, 1983 as the neutral Referee to hear and decide the unresolved questions herein with respect to the elimination of cabooses. Prior to this intervention, the Burlington Northern Railroad and the United Transportation Union, herein referred to as the Carrier and the Organization respectively, met on February 21, 22, April 4, 5, 6 and May 2, 3 and 4th to resolve their differences, but without success.¹

Mediation sessions under the aegis of the Referee's authority were held on July 27 and 28 and September 23, 1983 at which time several questions were jointly resolved. These resolutions will be verbatimly identified further on in this award. (See questions 8 and 9)

¹The Carrier served its notice on February 8, 1983. It states in pertinent part:

"We proposed to eliminate cabooses on all the territories of Burlington Northern, Minnesota Transfer, Walla Walla Valley, Joint Texas Division, Lake Superior Terminal Transfer and Camas Prairie on all assignments and service now existing, as well as similar assignments and service that may later be established or performed in the following categories:

"(1) From all yard (and yard transfer) assignments and service.

- (2) From all road switcher and local freight assignments and service on which the crew members are not normally paid on a mileage basis.
- (3) From all local freight, road switcher and work (and wrecker) train assignments and service on which the crew is not normally required to furnish rear-end flag protection.
- (4) From all "light engine," snowplow, self-propelled equipment, test and inspection equipment, assignments and service.
- (5) From all assignments and service that solely involves the towing of other locomotives.
- (6) From all intra-terminal and/or intra-station movements-within-station-limits (as set forth in operating rules, circulars and instructions) assignments and service in all classes of road service.

Items (1), (4), (5) and (6) involve all the territories of these railroads, as they now exist, and all assignments and service now existing, as well as similar assignments and service that may later be established or performed.

Items (2) and (3) involve the territory and assignments/service described in the attachments hereto and all similar assignments/service that may later be established or performed on any territory of these railroads as they now exist." It set forth by geographical location the trains affected.

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| 1. Springfield Region | 4. Twin Cities Region |
| 2. Denver Region | 5. Billings Region |
| 3. Chicago Region | 6. Seattle Region |
| | 7. Ft. Worth Region |

In addition, Carrier notified the Organization by letter, dated May 2, 1983 that it was adding the following crew assignment to the Chicago Region elimination:

"Job No. 13813 Yates-Lewiston turnaround local, five days per week and to Wyoming on the sixth day"

Moreover, in accordance with the Referee's directive at the September 23, 1983 mediation, the parties jointly articulated the specific questions that would be presented to this Board.

These questions are as follows:

1. Do items 2 and 3 of the Carrier's notice permit the Carrier to consider elimination of cabooses on trains which, by schedule rules, can be manned by unassigned crews operating in other than through freight service?
2. If the answer to question 1 is yes, are such trains to be counted toward the 25% limitation in through freight service if and when the Carrier serves notice for elimination of cabooses in through freight service?
3. Shall there be a car limit on the number of cars that an unassigned crew (pool or extra) called for local, road switcher (when permitted by Schedule rules) work and/or wreck train service may handle, and if so, what shall that limit be?
4. Is it the train and/or yard crew's responsibility to place and/or remove a rear-end protective-marker device?
5. If the answer to the previous question is yes, is the train crew entitled to an arbitrary allowance of a minimum of one hour's pay at the rate of the service performed separate and apart from payment for the trip for doing so?
6. Shall the Board set explicit criteria for "extended distances" in service covered by items 2 through 6 of the Carrier's proposal, and, if so, what shall they be?
7. What compensation, if any, will the train crew receive when operating a caboosless train pursuant to this notice?
8. What locomotive modifications are required to satisfy the agreement in both road and yard service?
9. What criteria should apply to elimination of cabooses in yard service?
10. Will crews continue to be paid pool caboose allowances, where such allowances presently apply, when operating without a caboose?

During the course of the arbitral proceeding at the Carrier's St. Paul, Minnesota offices, questions 2 and 10 of the adjudicative agenda were removed from consideration.* Hearing: October 24 & 25, 1983.

Questions 8 and 9 were resolved through negotiations and only questions 1, 3, 4, 5, 6 and 7 were presented to this Board.

In considering these questions, the Board takes judicial notice that the establishment of this tribunal stems from Article X of the National Agreement of October 15, 1982 which was crafted in accordance with the recommendation of Presidential Emergency Board No. 195. The national signatories established the implementing particulars in Article X which in essence comported with the Emergency Board's recommendation. In addition, they ably identified numerous questions regarding the interpretative construction of Article X and these questions were answered by the national representatives. In effect, they are designed to assist the implementing parties reach understandable agreements.² (See questions and answers appended to Article X).

² Presidential Emergency Board No. 195 recommended in part:

The Board believes that the elimination of cabooses should be an on-going national program. This program can be most effectively implemented by agreements negotiated on the local properties by the representatives of the Carriers and the Organization most intimately acquainted with the complexities of individual situations.

Accordingly, the Board recommends that the parties negotiate guidelines on the national level for local implementation that will be directly responsive to, or deal with, the following matters:

- (a) Safety of employees
- (b) Operating safety, including train length
- (c) Effect on employees' duties and responsibilities resulting from working without a caboose
- (d) Availability of safe, stationary, and comfortable seating arrangements for all employees on the engine consist
- (e) Availability of adequate storage space in the engine consist for employees' gear and work equipment

The Board recommends that each Carrier has the right to eliminate cabooses in all other-than-through freight service, subject to arbitration. The Board further recommends that each Carrier has the right to eliminate cabooses for not more than twenty-five (25%) percent of all through freight trains by the end of the agreement, subject to arbitration.

Notices for the elimination of cabooses should identify specific or similar assignments.

With regard to the elimination of cabooses in through freight service, the Board recommends that the Carrier shall not invoke final, binding arbitration provisions until the parties have resolved the caboose issue on all through freight trains regularly operating with 35 cars or less. Such cabooses so eliminated shall be counted toward the 25% maximum.

ARBITRAL QUESTIONS

1. Do items 2 and 3 of the Carrier's notice permit the Carrier to consider elimination of cabooses on trains which, by schedule rules, can be manned by unassigned crews operating in other than through freight service?

CARRIER'S POSITION

As a general principle, the Carrier argues that the caboose is not fulfilling its original purpose. It indicates that the National Transportation Safety Board and the Federal Railroad Administration do not require the utilization of cabooses and the December 1980 study published by the Interstate Commerce Commission entitled, "The Prospects For Reorganization, The Milwaukee Road as a Viable Carrier" notes that cabooses are costly and redundant.

In arguing for the elimination of cabooses manned by unassigned crews operating in other than Through Freight Service, Carrier argues that it does not want to be limited to assigned service. It asserts that most locals are for five or six day assignments and the demand for services does not justify the regular assignment of a five or six day local. It avers that the understandings reached at the mediation session provide a tightly structured framework for insuring that pool or extra crews when called for unassigned work will not be used as a subterfuge for converted or through freight service and thus, the Organization's disquiet has been allayed. It argues that the recommended proposal advanced by the Organization, whereby unassigned crew must exclusively perform the local road switcher work or wrecker service, will produce negative results and prevent a work train from doing local work and a rail switcher from re-railing a car. It maintains that the basic understandings reached on September 23, 1983 place significant constraints on Carrier's range of actions and effectively preclude the use, the Organization asserts is present. It contends that since there is no difference between the unassigned and the assigned crews, there is no justification for treating them differently as to cabooses.

ORGANIZATION'S POSITION

The union contends that the crews in pool service actually perform through freight work although occasionally they do perform local work. It argues that these crews are working in through freight service and asserts that award No. 72 of Special Board of Adjustment No. 574 held that train crews assigned to pool unassigned service were through freight crews and their cabooses should be treated as through freight cabooses. As such, it argues that Carrier's averment, that pool men now in local, work train, mine run service should not be included in the 25% through freight service limitation, is without merit. It contends that Carrier's Notice does not provide the specificity required by Article X of the National Agreement and the appended questions and answers and asserts that the aforesaid requirements mandate that the proposed Notice of caboose elimination identify specifically the trains on which cabooses are to be eliminated. It argues that all local service on the property performed by local crews are converted through freight and thus, they must be counted in the 25% limitation applicable to through freight service. It argues that the mosaic of practices on the property demonstrate quite clearly that unassigned crews performed through freight service and asserts that Carrier purposely articulated language which would permit it to move in a manner that palpably avoids the 25% limitation.

In essence, it contends that Carrier is now trying to claim that unassigned service can now be called a local service and then run any amount of cars as through freight without a caboose.

BOARD'S OPINION

In considering this question, the Board is mindful of the Organization's profound apprehension that the Carrier is seeking to run caboosless through freight service under the guise of unassigned locals. It believes, however, that the draft discussion language worked out at the September 23, 1983 mediation session provides the type of protection that prevents this perceived subterfuge. The Organization is correct when it contends that it would be an unfair advantage if the Carrier purposely tried to effectuate such an outcome, but the record evidence does not indicate that Carrier is intent on perpetrating such a result. The restrictive language of the draft proposal and Carrier's unequivocal assurance that it will not run these caboosless locals as converted or through freight are a sufficient safe guarantee that Carrier will adhere to its commitment. Carrier is not barred from seeking to eliminate cabooses as long as the implementing process comports with the defining criteria of Article X, but it must not blur the distinction between local and through freight service.³

³

See Article X - Cabooses

"Cabooses may be eliminated from trains on assignments in any or all classes of assignments by agreement of the parties.

caboose in all classes of service other than through freight service are subject to elimination by agreement or, if necessary, by arbitration.

This pivotal distinction must be studiously maintained. Accordingly, since the Board finds that the language of the discussion draft reasonably addresses the parties concerns, and Carrier's February 8, 1983 Notice complies with the pertinent notification and specificity requirements of Article X, it will award in toto the preamble and the five situational examples cited in the discussion draft. The Board does not find that any of the Section II guideline factors warrant the restriction of caboose elimination in these identifiable instances, but it pointedly admonishes Carrier that it fully expects the Employer to insure that the called unassigned crews do not handle trains that are, in fact, converted freight service. This is a categorical requirement. Otherwise, Carrier will be avoiding and perhaps, violating the explicit distinctions between local and through freight service. The discussion draft which is reproduced herein, provides a pragmatic format for implementing the elimination of cabooses on trains, which by schedule rules, can be manned by unassigned crews operating in other than through freight service.

"Where pool or extra crews are called for unassigned, local, road switchers, work or wrecker service, caboose need not be used when such service is performed:

- (1) during period assignment is under bulletin and until award is made to the successful bidder or bidders;
 - (2) in territory under operating rules where rear-end flagging protection is not normally required;
 - (3) exclusively on a branch line;
 - (4) on a main line where service is limited to running to and/or from terminal in connection with trip on branch line, except for one pickup and/or one setout, exclusive of bad order setouts or pickups;
 - (5) on main line or branch line where operation involves an intermodal commodity and/or unit train."
3. Shall there be a car limit on the number of cars that an unassigned crew (pool or extra) called for local, road switcher (when permitted by Schedule rules) work and/or wreck train service may handle, and if so, what shall that limit be?

The union proposes that there shall be a limit of 35 cars, but not to exceed 2,000 feet in train length that such crew may handle at any given point enroute.

CARRIER'S POSITION

Carrier contends that there is no basis for such limitation in either the Presidential Emergency Board's report or in the language of Article X of the National Agreement. In fact, it argues that the Emergency Board recommended that each Carrier had the right to eliminate cabooses in all other than through freight services, subject to arbitration.

It argues that there is no proof that any train covered by its Notice violates Section 3C of Article X, and notes that item 3 of its Notice was purposely designed to cover assignments and services on which the crew is not normally required to furnish rear-end flag protection.

It argues that if it is safe for an assigned crew to handle a 120 car local, it is equally safe if that crew happens to be drawn from the extra list. It asserts that by definition, Section 4b of Article X delineating high car counts does not preclude cabooses elimination from any trains in through freight service, and thus, diminishes the Organization's proposal for tight car limitations. It avers that the Organization has not demonstrated by any concrete factual evidence that a caboosless operation by unassigned crews, or on other than through freight service train which is in excess of 35 cars or 2000 feet necessarily creates an unsafe condition. It contends that careful examination of the attachment appended to its Notice pointedly shows that the average number of cars that the specified trains handle exceeds over 35 and amount to 40% of all the listed assignments.

It maintains it would be impractical and contrary to any reasonable logic if such a limitation were permitted on local trains and argues that it would necessitate needless extra work which is totally unwarranted under all the circumstances. In response to the Organization's citation of accidents, it observes that these incidents occurred with cabooses.

ORGANIZATION'S POSITION

The Organization argues that a local caboosless operation should have a fixed car limit. It contends that a train crew

must be able to view the entire train from the engine and be able to traverse a reasonable distance if crew members are required to walk back to the rear of the train before it can be reversed.

It asserts that if a road crossing is blocked because of an unforeseen situation, and a long train is involved, it may well place the crew a considerable distance from the situs of the incident. Moreover, if a long train is on a rail grade and a box car or the cars in the rear break loose, a serious accident might result. The Organization disputes the Carrier's position that new high technology equipment readily detects derailed cars and cited several derailment incidents including the Cascade Tunnel derailment and the accident at Olympia, Washington as examples.

It asserts that its proposal for a fixed car limit or train length will not only insure safe rail operations, which is consistent with the implicit objectives of Article X, but it will also prevent Carrier from running through freight service under the guise of local freight service.

BOARD'S OPINION

In reviewing the parties positions, the Board finds no reasonable justification for placing a car limit on local trains. To be sure, the union is correct when it contends that Section 2 of Article X requires that the operating safety of a proposed

caboosless operation must be seriously considered as a pre-condition for effectuation, but the Board finds no compelling evidence that the requested limitation is justified. There is no indication that an unassigned crew cannot safely operate a local train with more than 35 cars and the few incidents cited by the union do not persuade otherwise. Admittedly, the criteria set forth in Section 2 of Article X require that the safety of employees and the operating safety of the affected trains be considered, but the evidence developed at the hearing does not support such a limitation for the unassigned crews affected.

4. Is it the train and/or yard crew's responsibility to place and/or remove a rear-end protective-marker device?

CARRIER'S POSITION

The Carrier contends that the placement and removal of the rear-end protective-marker device is not outside the ambit of the Organization's traditional responsibility, since road and yard crews have always handled marker lights on the rear of cabooses. It cited the operating experience of several railroads to verify its position and noted the particular relevance of Award No. 2693 of Special Board of Adjustment No. 235 to this issue. Moreover, it argues that the decision in the Seaboard System Railroad Award is on point with this interpretation, since Referee Robert E. Peterson specifically held that the Carrier might properly provide for this class of employees

to handle the device under certain stated conditions and without additional compensation. (See in the Matter of the Arbitration between Seaboard System Railroad and United Transportation Union, September 26, 1983.)

It argues that in view of the understandings reached by the subcommittee at the September 23, 1983 mediation session, it would be prudent to adopt these understandings as conclusive of this question. It noted the general technical features of the new marker device and opined that it would not inconvenience or burden the employees responsible for its handling.

ORGANIZATION'S POSITION

The Organization contends that Article X of the National Agreement does not provide that road and yard crews will be responsible for placing and removing their rear-end protective device. It asserts that the device will place an additional obligation on the affected crews since its weight is in excess of the old marker device, and thus, it will unnecessarily burden crew members when they have to handle such equipment. Particularly, the Organization asserts that it would be counterproductive and inherently unsafe if an employee has to carry the device for a mile or so in addition to his own equipment which would create an unnecessary hazard and extend the employees' responsibility beyond what is reasonably acceptable.

The Organization acknowledges that it handled markers on passenger trains in the past and placed and removed markers

from cabooses, but noted that these duties were far more limited and did not require the affected employees to secure the safety of the marker devices. The Organization asserts that it does not object if other employees handle the marker device, but feels it would be unduly detrimental for its covered members to assume this responsibility. The Organization further contends that the device appears to be more than a simple marker and if it is required to be responsible for its handling, the Carrier should provide additional compensation. As a further concomitant to an arbitrary allowance, the Organization argues that if it is responsible for the marker device handling, the Carrier should provide a reception box close to the rear end of the caboose where the box can be placed and where the employees do not have to walk long distances.⁴

BOARD'S OPINION

In considering this question, the Board finds that it is the train and yard crews responsibility to place and/or remove a rear-end protective-marker device. Careful analysis of the evidence indicates that the work involved does not fall outside the purview of their traditional job responsibilities, but that the work is incidental to their normal range of duties. It may

⁴ The representative of the Yardman employees requested that his constituent members be responsible for handling the protective-marker device.

well be that the new device which weighs more than the old marker, creates an additional work load effort which is difficult to define with any precision at this time, but the basic duties have been and can be performed by the affected employees. This is the salient consideration, The Board finds no evidence that the asserted work load changes would preclude or restrict a caboosless operation or unreasonably enlarge the duties of the road and yard crews as to make it a burdensome obligation.

The Board feels that the subcommittee's discussion proposal which carefully addressed this issue provides in part, a more realistic organizational approach for insuring its effective implementation and is consistent with the Seaboard System decision. As such, the Board finds that the affected personnel may be required to place and remove the rear-end protective-marker device under generally understood work of the craft traditions. The affected personnel may not be required to add and/or remove rear of train marker/air guage devices (i.e. so called "black boxes") at points where other appropriate personnel are on duty and available to do so, but they may be required to do so at other points and at times when it is done in connection with the road and/or yard train or cars that they handle. Moreover, in line with the Organization's concern that affected crews will have to carry the rear-end protective-marker device a considerable distance at times, the Board

recommends very strongly that Carrier make every reasonable effort to minimize the inconveniences which the handling of this device might cause.

5. If the answer to the previous question is agreed, is the train crew entitled to an arbitrary allowance of a minimum of one hour's pay at the rate of the service performed separate and apart for payment of the trip?

CARRIER'S POSITION

The Carrier contends that there is no basis for the payment of this arbitrary. It argues that Article X of the National Agreement does not provide for such a payment and moreover, to require such payment would run counter to the moratorium provision in Article XIII of the National Agreement.

In proposing Article X, Carrier avers that it was not the intent, explicitly or implicitly, to provide a compensatory quid pro quo for caboose elimination, and contends that the performance of such duty will not increase the assignment responsibilities of the crew. In fact, it opines that it might reduce their overall responsibilities. It asserts that this task falls within the scope of the crew's normal position requirements and could easily be accomplished. Moreover, it argues that the arbitration decisions in the Chessie and the Seaboard System cases do not provide an arbitrary for the handling of the rear-end protective device and thus, these decisions must be given full judicial weight. Carrier argues that when this work is performed, the affected employees will be on duty and under pay

either under the basic day rule, the initial terminal delay or switching rules, when the rear of the train unit is mounted. It contends that this Board is not empowered to award a compensatory allowance, since Article X of the National Agreement does not extend this authority to the Board.

ORGANIZATION'S POSITION

The Organization contends that inasmuch as it perceives this task not to be their work, the employees should be provided additional compensation for the attendant delays, inconvenience, and increase responsibility which this assignment will require. It asserts that contrary to the Carrier's position that the Board lacks jurisdiction to award an arbitrary, the parties herein specifically empowered the Board to decide this question. It avers that the Controlling Agreement does not preclude this delegation of judicial power and asserts that the Presidential Railroad Commission in its February 1962 report, stated that arbitraries were permissible for the performance of certain types of work or for inconveniences or delays.

It argues that the duty of handling the rear-end protective device will cause such inconvenience and a compensatory allowance under these explicit circumstances is fully justified. In this connection, it further contends that the entire crew should be compensated the minimum of one hour time and cites several First Division Awards as being supportive of its position. (These awards are 1185, 11747, 9165, 9041, 6141, 6067, 11680, 9041 et al).

Moreover, it maintains that from a broader perspective, the nations's carriers by their own admission, acknowledged that the railroad industry will save approximately \$400,000,000 from caboosless operations and it is not unreasonable for the employees to request a compensatory allowance, particularly when an added burden will be placed on their normal duty assignments, and a potential safety problem is ever present. In fact, it argues that at the first bilateral negotiations meeting with the Carrier, the employer offered the Organization money to eliminate all of the cabooses on the property. It argues that the rear-end protective device is also a radio communication apparatus, which is covered by Article XV of the 1972 National Agreement, which permits the contracting parties on individual railroads to negotiate upon any subject of mutual interest.

BOARD'S OPINION

In considering this question, the Board agrees with the Carrier that a compensatory allowance is not provided for in Article X of the National Agreement. Close reading of Article X, particularly the Section 2 Guidelines therein, does not reveal that a compensatory allowance is contemplated when cabooses are eliminated. The factors delineated in Section 2 relate to the elimination of cabooses and provide the preclusive considerations which the Board is enjoined to consider when determining whether cabooses are to be eliminated. These factors collectively and within the context of Section 2, do not provide any plausible

basis for awarding a compensatory allowance. Further, Section 7 of Article X does not provide by definition, any contextual rationale for awarding this allowance. As the Board stated in question 4 herein, the placement and removal of the rear-end protective device falls within the normal position responsibility of the affected crew, and thus, when said employees are performing this task while under pay, the task is a concomitant extension of their normal duties. While Article XV of the 1972 Agreement does provide, on its face, for joint negotiations on any subject of mutual interest, the Article relates to portable radios which is not the case here. More importantly, the Carrier has not acquiesced to the position that the Board is entrusted with the judicial responsibility of deciding an arbitrary allowance. Since the Carrier has not agreed to waive the application of Article X of the National Agreement, this Board of necessity must confine its deliberations and decision within the context of this Article. This Board's jurisdiction is not coextensive with a court of law or equity; it is confined to the interpretation and application of Article X. The Board was created pursuant to the provisions of Article X and draws its essence and authority from these provisions.

These parametrical limitations do not preclude the parties from jointly fashioning a compensatory arrangement, but the Board cannot force such an agreement upon them. In the future, when

the parties have had an opportunity to assess more precisely the magnitude and impact of this assignment, it might be possible for them to agree on a compensatory allowance, if the work proves burdensome and unsafe. The Board has no concrete unequivocal evidence that this is the case now, and its decision is restricted to the present provisions of Article X.

6. Shall the Board set explicit criteria for "Extended distances in service covered by items 2 through 6 of the Carrier's proposal and, if so, what shall they be?"

CARRIER'S POSITION

Also SEE
PAGE 29 & 24

Carrier contends that there is no evidence that would warrant a determination that is at variance with the arbitral decisions of the Chessie and the Seaboard Coast caboose cases and the October 15, 1982 National Agreement, whereby the prudent rule of reason would apply when measuring extended distances. It asserts that the national negotiators recognized that situational circumstances would dictate what would be a reasonable extended distance, and thus, there is no persuasive evidence that an inflexible guideline is needed. It noted that both sides herein, at the behest of the Board, tried to negotiate a practical accommodative provision but without success. It argues that the union's proposal which would permit each individual to exercise his or her own discretion as to what the prudent rule of reason means, would give each and every crew member a veto power over whether his or her train can be operated without a caboose.

It asserts that this would wreak havoc on its rail operations. It argues that the national negotiator's joint interpretation provides the flexibility to effectuate caboosless operations and that such flexibility is needed to manage effectively rail operations. It offered an alternative proposal, whereby one mile would be considered an extended distance, but this was unacceptable to the Organization.

ORGANIZATION'S POSITION

The Organization argues that without a caboose a crew member's safety is endangered, particularly when that person is required to ride on the side or rear of cars. It argues that the Burlington Northern Railroad is a large transportation system which covers approximately 42,322 miles of track and operates under variable, and often times, extreme weather conditions. It asserts that in view of the potential hazards, which crew members would be exposed to when operating caboosless, that it would be reasonable for each individual crew member to determine what is an extended distance. It contends that the prudent rule of reason is reasonably definable only within the context that the affected individual should make this judgment, since he or she is immediately confronted with the practical exigencies of the moment. It avers that the one mile proposal advanced by the Carrier is totally unreasonable, but a one hundred yard maximum distance might be a more

reasonable standard for the pull or shove of a train without a caboose. In any event, it argues that the decision should be left to the affected individual employee to determine under the prudent rule of reason what is an extended distance under cabooseless operations.

BOARD'S OPINION

In considering this question, the Board finds no justification for entertaining either the one mile limit proposed by the Carrier as an alternative definition, or the definition put forth by the Organization that each individual crew member be empowered to make such a decision. Both proposals are impractical. In accordance with the intended purpose of the National Joint Committee definition that the prudent rule of reason must apply, and the predecessor arbitral awards on this point upholding the same construction and application, the Board finds that the aforesaid interpretation must apply in this instance. The Board finds no reason for varying this interpretation especially since there was no compelling showing on the basis of past or projected experience that an inflexible guideline is warranted. The Board recognizes, however, that as experience with a cabooseless operation is gained, it would behoove the parties as a matter of practical necessity to see whether they can jointly define a more precise application of the prudent rule of reason.

7. What compensation, if any, will the train crew receive when operating a caboosless train pursuant to this notice?

CARRIER'S POSITION

The Carrier contends that the Organization has not provided any concrete basis for establishing that an arbitrary is warranted. It argues that it was not part of the bargain for a National Agreement and that the Presidential Emergency Board's report is silent on the matter of compensatory allowances. It asserts that Section 2C of Article X does not indicate that an effect on the employees duties and responsibilities resulting from working caboosless necessitates added compensation, and argues that this provision only relates to the singular question of whether a train should run caboosless or not. It avers that the national negotiators were too skillful to avoid the question of a compensatory allowance and thus, the focus of this proceeding is on the proposed elimination of cabooses. It avers that Section 7 of Article X does not provide a defining linkage, since Section 7 applies only when a train or assignment is operated caboosless, other than in accordance with the provisions of this Article. In effect, it asserts that Section 7 does not apply when such train or assignment is operated caboosless, in accordance with Article X. Moreover, it argues that there is no side letter or jointly agreed upon understanding that would provide, a variant interpretation. It argues that

the Chessie and Seaboard Coast arbitral boards peremptorily reject compensatory allowances and noted that there is no evidence that it was the mutual intent of the national negotiators to have arbitrators go beyond those provisions stipulated in Article X. It acknowledged that it made a money offer to the Organization, when negotiations were first begun, but noted that this offer was predicated upon the total elimination of cabooses which would include through freight service and not just the 25% limitation specified in Article X. It argues that this prior negotiating initiative to eliminate cabooses does not extend to the Board the power to award compensatory allowances. In affect, it asserts that while the Board cannot authorize the parties to run more than the 25% limitation for through freight service, the parties by themselves are not estopped from negotiating a cabooseless agreement outside the context of Article X. Moreover, it argues that the Cheney and Guthrie awards cited by the union, do not provide precedential justification for concluding that the Board in this proceeding has implicit authority to go beyond the parameters of Article X. It maintains that the Board would be vitiating a long line of railway arbitration awards holding that to approve payment in the absence of a specific rule would be tantamount to writing a new provision.

ORGANIZATION'S POSITION

The Organization contends that the parties placed no limitations on the Board's authority to award compensatory allowances. It asserts that the Board was specifically empowered by the parties joint formulation of the impasse questions herein to determine this question. It argues that the prior arbitral awards of Arbitration Board No. 419 with respect to this question, are not binding on this Board, since the national negotiators envisioned variant decisional outcomes for the different railroad properties. It maintains that while there is a moratorium in effect, it is not on Article X of the 1982 National Agreement which forwarded this issue to further negotiations or arbitration. It asserts that a cabooseless operation will impose additional burdens upon the affected crew members, and an arbitrary allowance is not unreasonable when these additional inconveniences are thoughtfully considered. It contends that during the inception of the parties negotiations for a cabooseless agreement, the Carrier never apprised the Organization that its initial offer went beyond the National Agreement. It argues that it was acting under the assumption that a compensatory allowance was negotiable and by extension a permissible subject for arbitration. It asserts that past practice should govern where a specific rule doesn't purposely foreclose compensatory payments and cited the Cheney award as

controlling authority. (See - In the Matter of a Controversy Between the Brotherhood of Railroad Trainmen and Certain Participating Eastern, Western and Southeastern Railroad Carriers of the United States, May 25, 1951)

BOARD'S OPINION

In considering this question, the Board finds no justification for awarding a compensatory allowance. As indicated in the Board's opinion before, with respect to question 5, the Board finds no agreement language in Article X that would warrant such an interpretation. The Board is cognizant that the Carrier made an attempt to negotiate an agreement for the total elimination of cabooses, which contained a compensatory allowance, but this initiative does not provide foundation precedent for this Board, unless the parties, particularly the Carrier, waived their rights to be bound by Article X. This, the Carrier has not done and the Board is constrained by the provisions of this Article. In accordance with these provisions, the Board finds no justifiable rationale for awarding an arbitrary. Neither Section 2C nor Section 7 provide an interpretive basis for an arbitrary allowance, and it would be judicially imprudent for this board to read into Article X such grant of authority. Moreover, careful analysis of the Cheney award does not indicate that this award provides any basis for varying the clear language of Article X. In the Cheney award, the Board therein purposely noted that the parties to the dispute placed

no limitation on the Board's authority to decide the Coupling Rule Controversy DeNovo. In fact, the parties granted the Cheney Board carte blanche authority to decide the adjudicative issue. This is not the case herein. Carrier has not waived its right to be bound by Article X, and the Board as a creature of this Article has no power to go beyond the language of this provision. Accordingly, since the Board has found no agreement language for awarding a compensatory allowance, it must deny the Organization's request. This does not preclude the Organization from subsequently seeking an arbitrary when national negotiations for a successor industry-wide contract are held, but the Board has no power to grant such an arbitrary here.

9. "What criteria should apply to elimination of cabooses in yard service?"

The Board takes judicial notice that the parties have jointly formulated a mutually agreed upon settlement of this question.

It is set forth herein:

Caboose equipped with fuel and such supplies and equipment as the rules require, will be furnished for transfer movement under the following conditions:

- A. When pulling cars where switchmen are required to ride the rear car of transfer movement.
- B. When shoving cars where switchmen are required to be on the leading car of transfer movement.

DEFINITION 1.

A "transfer movement" for the purpose of this rule is any of the following movements of cars where the distance that switchmen are required to ride the car exceeds one mile one-way:

1. Movement between a yard and foreign line interchange

tracks.

2. Movement between a yard and an industrial complex.
3. Movement between separate individual yards.

DEFINITION 2.

"Required to ride the rear or lead car" is defined for the purpose of this rule to mean where required by the Carrier' operating rules, bulletins or special instructions, or when required by the yardmaster or officer in charge.

8. "What locomotive modifications are required to satisfy the agreement in both road and yard service?"

The Board takes judicial notice that the parties have jointly formulated a mutually agreed upon settlement of this question.

It is set forth herein:

In Road Service

1. AAR seats presently used on locomotives will be used for additional seats.
2. Locomotive will be fitted with not more than five seats in the control cab (not more than five persons will be required to ride in a cab).
3. Employees represented by the UTU operating without a caboos will not be disciplined or censured in any manner for refusal to leave the initial terminal of their run if the engine they are required to ride in does not meet the following standards:
 - A. Sanitary toilet.
 - B. Controlled heat.
 - C. Paper towels, toilet paper, cooled sanitary water in sealed containers, and a dispenser of hand cleaner, will be supplied in quantity sufficient to make the trip.
 - D. Windows and doors in condition to provide adequate protection against weather conditions.

A seat for conductor will be provided with a mounted writing surface with adequate lighting. Also, all stationery and supplies necessary will be provided.

F. Refrigerator for water cooling and lunches will have to be investigated -- no agreement as to size was made. (This did intend that a refrigerator (cooling device) would be furnished for these purposes and that the parties so agreed. For BN R.R. JAL. J.J. Ratcliff. For all General Committees involved C.F. Christiansen, October 25, 1983)

4. All necessary supplies and cleaning to be done by others than the train crew.

5. Adequate storage space for employees' gear.

In Yard Service - Where the caboose has been removed pursuant to this agreement, the above conditions will apply.

AWARD

QUESTION 1.

Do items 2 and 3 of the Carrier's notice permit the Carrier to consider elimination of cabooses on trains which, by schedule rules, can be manned by unassigned crews operating in other than through freight service?

ANSWER:

Yes, consistent with the terms set forth in the Board's opinion herein.

QUESTION 3.

Shall there be a car limit on the number of cars that an unassigned crew (pool or extra) called for local, road switcher (when permitted by schedule rules) work and/or wreck train service may handle, and if so, what shall that limit be?

ANSWER:

No. There shall be no such limit. (See opinion herein for rationale)

QUESTION 4.

Is it the train and/or yard crew's responsibility to place and/or remove a rear-end protective-marker device?

ANSWER:

Yes, It is their responsibility. (See opinion herein for rationale)

QUESTION 5.

If the answer to the previous question is yes, is the train crew entitled to an arbitrary allowance of a minimum of one hour's pay at the rate of the service performed separate and apart from payment for the trip for doing so?

ANSWER:

No. (See opinion herein for rationale)

QUESTION 6.

Shall the Board set explicit criteria for "extended distances" in service covered by items 2 through 6 of the Carrier's proposal, and, if so, what shall they be?

ANSWER:

No. The Board finds no justification for setting explicit criteria for "extended distances." The prudent rule of reason shall apply. (See opinion herein for rationale)

QUESTION 7.

What compensation, if any, will the train crew receive when operating a caboosless train pursuant to this notice?

ANSWER:

Article X of the National Agreement, dated October 15, 1982 does not provide such compensation. (See opinion herein for rationale)

QUESTION 8.

What locomotive modifications are required to satisfy the agreement in both road and yard service?

ANSWER:

See parties settlement disposition herein.

QUESTION 9.

What criteria should apply to elimination of cabooses in yard service?

ANSWER:

See parties settlement disposition herein.

Respectfully submitted,



George S. Roukis,
Neutral Referee

GSR:DZ

Issued in St. Paul, Minnesota

December 19, 1983

State of New York
County of Nassau

On the 19th day of December, 1983, before me personally came and appeared George S. Roukis, to me know and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged that he executed the same.

MARIA E. ROUKIS
Notary Public, State of New York
No. 30-4672617
Qualified in Nassau County
Commission Expires March 30, 1984

