

ARBITRATION BOARD NO. 419

: In the Matter of the 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 Committee :
and the United Transportation Union :

: FINDINGS AND AWARD

: Before :

: GEORGE S. ROUKIS
: NEUTRAL REFEREE

HEARING HELD: February 7 and 8, 1985 at the Burlington Northern
Railroad's Administrative Offices, located in
St. Paul, Minnesota.

APPEARANCES :

FOR THE BURLINGTON
NORTHERN RAILROAD

J. J. Ratcliff

W. A. Bell

W. A. Brown

R. Batterson

W. Doney

G. A. LaValley

S. L. McLaughlin

M. Molitor

J. Moore

B. J. Mason

J. Russell

FOR THE UNITED TRANS-
PORTATION UNION

J. A. Alford

M. M. Winter

A. S. Driver

G. D. Hitz

C. R. Jones

F. W. Kruger

B. W. Long

J. W. Reynolds

J. H. Rogers

D. E. Wegler

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 November 26, 1984 as the Neutral Referee to hear and decide the unresolved issues 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, had met in response to Carrier's Notice of February 16, 1984, but were unable to reach a bilaterally negotiated system-wide Agreement.¹

The arbitral proceedings, which took place on February 7 and 8, 1985, included an on-situs group visitation to ascertain whether Carrier complied with the Referee's previous Award regarding locomotive modifications. (See the previous Award issued on December 19, 1983, specifically Questions 8 and 9.)

¹According to Carrier's letter of October 4, 1984 to the Executive Secretary of the National Mediation Board requesting the appointment of the undersigned Referee, the parties had met on March 6 and 25, 1984. Carrier's notice was served on behalf of the Burlington Northern, the Joint Texas Division, Camas Prairie Railroad Company, Minnesota Transfer Railway Company, Lake Superior Terminal and Transfer Railway Company. (See Carrier's letter from J. B. Dagnon, Vice-President - Labor Relations Burlington Northern Railroad Company to Rowland K. Quinn, Executive Secretary, NMB.)

In the instant dispute, the questions submitted for adjudication relate to the elimination of cabooses in through freight service and, as such, are governed by the criteria set forth in Section 4 of Article X of the October 15, 1982 National Agreement.² This section reads as follows:

"Section 4. Through Freight Service

(a) There shall be a 25% limitation on the elimination of cabooses in through freight (including converted through freight) service, except by agreement. The 25% limitation shall be determined on the basis of the average monthly number of trains (conductor trips) operated in through freight service during the calendar year 1981. Trains on which cabooses are not presently required by local agreements or arrangements shall not be included in such count, shall not be counted in determining the 25% limitation, and any allowance paid under such agreements or arrangements shall not be affected by this Article. A carrier's proposal to eliminate cabooses may exceed the minimum number necessary to meet the 25% limitation. However, implementation of the arbitrator's decision shall be limited to such 25% and shall be instituted on the basis established below. In the event a carrier's proposal is submitted to arbitration, it shall be revised, if necessary, so that such proposal does not exceed 50% of the average monthly number of trains (conductor trips) operated in through freight service during the calendar year 1981.

(b) In the selection of through freight trains from which cabooses are to be eliminated, a carrier shall proceed on the basis of the following categories:

- (i) trains that regularly operate with 35 cars or less;
- (ii) trains that regularly operate with 70 cars or less which are scheduled to make no stops en route to pick up and/or set out cars;
- (iii) trains that regularly operate with 70 cars or less which are scheduled to make no more than three stops en route to pick up and/or set out cars;
- (iv) trains that regularly operate with 120 cars or less which are scheduled to make no stops en route to pick up and/or set out cars;

²The Referee takes judicial notice that while Section 1(e) of Article X requires an arbitral determination within thirty (30) days after the conclusion of the hearing, the parties jointly waived this limitation.

(v) trains that regularly operate with 120 cars or less which are scheduled to make no more than three stops en route to pick up and/or set out cars;

(vi) trains that regularly operate with more than 120 cars which are scheduled to make no stops en route to pick up and/or set out cars;

(vii) all other through freight trains.

(c) The implementation of the arbitrator's decision shall be phased in on the following basis: the carrier may immediately remove cabooses from one-third of the trains that may be operated without cabooses, another one-third may be removed thirty (30) days from the date of the arbitrator's decision and the final one-third sixty (60) days from the date of the arbitrator's decision."

The unresolved questions are:

1. Will cabooseless conductor trips made by unassigned crews be counted toward the 25% limitation set forth in Section 4(a)?
2. How shall the 25% limitation be computed?
3. How will the categories delineated in Section 4(b) of Article X be observed?
4. How will these categories apply to intermodal and unit commodity trains?
5. How shall sequential categories be determined?
6. Shall carrier furnish each General Chairman a report of the number of unassigned conductor trips that run cabooseless?
7. Shall carrier furnish lockers under existing agreements in cabooseless operations?
8. Are the locomotive facilities and equipment as set forth in the Board's Question 8 determination in the Arbitration Award of December 19, 1983 also applicable in resolving this through freight notice?

ARBITRAL QUESTIONS

1. Will cabooseless conductor trips made by unassigned crews be counted toward the 25% limitation set forth in Section 4(a)?

CARRIER'S POSITION

Carrier argues that consistent with the Board's decision in the prior arbitration Award involving local freight service, unassigned crews can handle specified trains of listed types in cabooseless trains and such trains should not count toward the 25% limitation. Carrier asserts these trains are not in the category of through freight service.

ORGANIZATION'S POSITION

The Organization contends Section 4(a) applies not only to through freights, but also to converted through freights. It avers that almost all of the trains involved in the earlier question 1 fit one of these categories and accordingly, by extension, cabooseless conductor trips made by unassigned crews should be counted toward the 25% limitation.³

BOARD'S OPINION

In considering this question, the Board finds the Union's position consistent with its (Board's) determination in the earlier award, and also finds that Section 4(a) applies to through freight and converted through freight service. Consequently, all cabooseless conductor's trips made by unassigned crews must be counted towards the 25% limitation set forth in Section 4(a) of Article X of the October 15, 1982 National Agreement.

³Question #1 in the Local Caboose Award, dated December 19, 1983 reads: "Do items 2 and 3 of the Carrier's notice permit the Carrier to consider the elimination of cabooses on trains which, by schedule rules, can be manned by unassigned crews operating in other than through freight service?"

2. How shall the 25% limitation be computed?

CARRIER'S POSITION

Carrier notes that there are caboose laws at present in the states of Oregon, Montana and Nebraska. It argues that these should be included in the 1981 count and observes that predecessor arbitral caboose awards have supported this computational approach. In particular, it avers that the caboose awards involving Southern Pacific and Union Pacific-Western Pacific railroads are indeed on point with its position; and further asserts that the 25% limitation cannot be rigidly computed on either a month to month basis or even a year to year basis.

UNION'S POSITION

The Organization argues that it would be imprudent to include in the 1981 count trains that are now precluded by state law from running cabooseless, since it would not reflect an accurate operational profile. It asserts that the 25% limitation should apply on a month to month basis, which is operationally feasible; and points to the language of the Chicago and Northwestern Agreement which provides for this computational methodology.

BOARD'S OPINION

In reviewing the parties arguments, the Board finds Carrier's position on the first part of the question meritorious, while finding the Organization's position on the computational frequency logically more compelling. The average monthly number of trains (conductor trips) operated in through freight service during calendar year 1981 aggregated 36,243 which included conductor trips made in states with caboose laws. This is a

reasonable approach. As to computational frequency, it is contemplated that Carrier will attempt to apply the 25% limitation on a monthly basis as accurately as administratively possible, but overages and shortages may be corrected in subsequent months. The Board is not convinced that a monthly measurement assessment is not administratively feasible.

3. How will the categories delineated in Section 4(b) of Article X be observed?

CARRIER'S POSITION

Carrier argues that the categories listed in Section 4(b) are too rigid and asserts that at times an exception is needed to insure flexibility. It maintains that the specified categories, practically speaking, are too restrictive.

ORGANIZATION'S POSITION

The Organization contends that the Section 4(b) language is clear and specific and must be enforced as the parties intended their application.

BOARD'S OPINION

Section 4(b) is explicit. Except as provided in the answer to Question 4, in the selection of through freight trains for which cabooses are to be eliminated, Carrier will adhere to the categories set forth in Section 4(b) of Article X. This is clear and unambiguous language and it must be faithfully observed.

4. How will the categories apply to intermodal and unit commodity trains?

CARRIER'S POSITION

Carrier argues that the caboose law states and the strict sequencing required by Section 4(b) will necessitate taking black boxes off and putting cabooses on at state lines or nearest the terminal outside such states, and then doing the reverse after the train traverses the caboose law state. It asserts these changes are operationally difficult, and avers that if "trains" mean over-the-whole route rather than conductor trips, then the performance of sequence is precluded on trains traveling through caboose law states.

UNION'S POSITION

Similar to its assertions regarding Question #3, the Organization argues that strict adherence to sequential categories is Agreement required.

BOARD'S OPINION

There are practical considerations that must be properly weighed. These include train length and the relevance of state caboose laws. Upon consideration of the arguments, the application of the Section 4(b) categories to intermodal and unit commodity trains of no more than 70 cars but not to exceed 4,015 feet in length, or to trains which run through states with caboose laws, will be waived for the entire length of the train's route. This is a workable accommodation that comports with the parties expressed needs and the application of Section 4(b). By way of illustration, Montana has a caboose law. The categories

would not apply to a Chicago to Seattle train. They would be waived for the entire length of the train's route. Correlatively, a unit grain train regularly operates with 54 cars. It could be run with a caboose over the train's entire route even though it would, without this provision, be a category (ii) or (iii) train. It is intended that these trains will not preclude the carrier from progressing caboose eliminations into categories (iv), (v), (vi) and (vii).

5. How shall sequential categories be determined?

CARRIER'S POSITION

Carrier contends that sequential categories should be determined by regular car count on the train as it leaves the track on which first made up. It analogizes the situation to Initial Terminal Delay Payments which cease at that point.

ORGANIZATION'S POSITION

The Organization asserts that cars handled at any point enroute should determine sequential categories, and argues that under Section 4(b) the regular car count upon departure from the originating terminal is controlling.

BOARD'S OPINION

Upon the evidence, the Board finds the Organization's position persuasive. In determining the category, pursuant to Section 4(b), of a particular train, the regular car count upon departure from the originating terminal will be used. As an example of its application, lets assume that a train runs from

Twin Cities to Kansas City. The train regularly departs the initial make-up track with 34 cars. It regularly departs the consolidated Twin Cities Terminal with 69 cars. Accordingly, depending upon the number of scheduled pick ups or set outs between the Twin Cities and Willmar, it is a category (ii) or (iii) train. Thus, the category of the train from its terminal of origin (Twin Cities) to its destination terminal (Kansas City) will be established by the number of cars handled and pick ups or set outs made on the initial crew assignment, i.e. Twin Cities to Willmar.

6. Shall Carrier furnish each General Chairman a report of the number of unassigned conductor trips that run cabooseless?

CARRIER'S POSITION

Carrier asserts that the preparation of such a report is unnecessary since it involves redundant cumbersome paperwork. It argues that the Organization can readily determine from normal reporting channels the number of conductor trips that run cabooseless.

ORGANIZATION'S POSITION

The Organization avers that a report is needed to preclude abuse and breach of the cabooseless limitation. It asserts that it is not a burdensome reporting system, but instead provides a simplified way of monitoring Agreement compliance.

BOARD'S OPINION

Based upon the realistic exigencies of cabooseless operation

the Board concurs with the Organization that a report is justified. This will insure the strict compliance required by Article X. Accordingly, and consistent with this observation, Carrier is directed to furnish each General Chairman a report of the number of unassigned conductors' trips on trains that are run caboosless each month out of each source of supply. (Crew change point.)

7. Shall Carrier furnish lockers under existing Agreements in caboosless operations?

CARRIER'S POSITION

Carrier argues that while lockers are provided under pool caboos agreements, these agreements do not apply to caboosless operations. It avers that absent specific agreements or compelling circumstances that warrant otherwise, there is no reason to provide such facilities.

ORGANIZATIONS'S POSITION

The Organization maintains that employees involved in caboosless operations have a greater need for lockers than employees in pool caboos situations. It argues that by definition, the elimination of cabooses creates new personal inconveniences that could affect morale and productivity. It avers that the provision for lockers, which per se is not unprecedented, is a justified practical response to caboosless operations.

BOARD'S OPINION

In considering this question, the Board agrees with the Organization's position. The authority underlying the furnishing of lockers under existing agreements to pool cabooses operations is pertinent to cabooselless operations. There are no preclusive extant agreements or practices that would warrant a variant construction; and the need for lockers has been amply demonstrated. As such, lockers will be furnished under these existing agreements in the same manner as when cabooses are used.

8. Are the locomotive facilities and equipment as set forth in the Board's Question 8 determination in the Arbitration Award of December 19, 1983 also applicable in resolving this through freight notice?

CARRIER'S POSITION

Carrier maintains that it has fully complied with the Board's prior Award regarding the provision for a conductor of a seat with a mounted writing surface and adequate lighting in locomotive cabs. It argues that the present locomotive cab configuration comports with the Board's December 19, 1983 Award and is industry normative when compared with the locomotive cab configurations of other railroads.

ORGANIZATION'S POSITION

Some members of the United Transportation Union's Committee were concerned that the way Carrier configured the locomotive cab to comply with the Board's decision created cab environmental conditions that interfered with the work of the conductor. It was recommended that the cab seating arrangement be

reconfigured so that the conductor's seat is positioned in a manner that does not interfere with his duty assignments.

BOARD'S OPINION

The Board takes judicial notice of its December 19, 1983 caboose arbitral Award. It directed therein the following implementing action:

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

Based on this directive, Carrier proceeded to configure locomotive cabs with the requirements of the Award, but some concern was expressed that the reconfigured locomotive cabs were not operationally practical for conductors. The Organization requested Carrier to make available for compliance inspection locomotives in the St. Paul, Minnesota area to determine whether Carrier fully complied with the December 19, 1983 Award. Pursuant to this request, the Referee was escorted by Carrier and Organization representatives to a large rail situs, whereupon several running locomotives were inspected. In addition at the hearing, the Referee was shown photographs of cab configurations and blueprints of the locomotive cab design; and heard arguments with respect to the contending positions. In considering all these factors, the Board has determined that Carrier has complied with the December 19, 1983 Award; and that the present reconfigured locomotive cab is appropriate and consonant with the compliance requirements of the prior Award. The Board further notes that while compliance is evident, the parties are nevertheless obligated to monitor

the effectiveness of the reconfigured cab to insure that it is operationally cost and safety efficient.

AWARD

QUESTION 1.

Will caboosless conductor trips made by unassigned crews be counted toward the 25% limitation set forth in Section 4(a)?

ANSWER:

Yes. (See Opinion herein.)

QUESTION 2.

How shall the 25% limitation be computed?

ANSWER:

It shall be computed by the monthly average number of trains (conductor trips) operated in calendar year 1981 which included conductor trips made in caboose law states, i.e. 36,243 trips. Carrier will apply the 25% limitation on a monthly basis as accurately as administratively possible. Shortages and overages may be corrected in subsequent months.

QUESTION 3.

How will the categories delineated in Section 4(b) of Article X be observed?

ANSWER:

Except as provided in the answer to Question 4 in the selection of through freight trains for which cabooses are to be eliminated, there will be adherence to the categories set forth in Section 4(b) of Article X.

QUESTION 4.

How will these categories apply to intermodal and unit commodity trains?

ANSWER:

The application of the Section 4(b) categories to intermodal and unit commodity trains of no more than 70 cars, but not to exceed 4,015 feet in length, will be waived for the entire length of the train's route. This waiver will also apply to trains which run through cabooses law states. (See Opinion for illustrations.)

QUESTION 5.

How shall sequential categories be determined?

ANSWER:

(See Opinion for rationale and application.)

QUESTION 6.

Shall Carrier furnish each General Chairman a report of the number of unassigned conductor trips that run caboosesless?

ANSWER:

Yes. (See Opinion for rationale and application.)

QUESTION 7.

Shall Carrier furnish lockers under existing Agreements in caboosesless operations?

ANSWER:

Yes. Lockers will be furnished in the same manner as when cabooses are used.

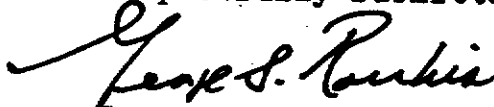
QUESTION 8.

Are the locomotive facilities and equipment as set forth in the Board's Question 8 determination in the arbitration Award of December 19, 1983 also applicable in resolving this through freight notice?

ANSWER:

Yes. The Board's decision in the prior Award is applicable. Further, predicated upon the data presented to the Board on February 7 and 8, 1985, the Board finds no compelling reason to change Carrier's mode of compliance with the provision of a conductor's seat and related ancillary facilities in the locomotive cab. The present reconfigured cab appears acceptable.

Respectfully submitted,



George S. Roukis
Neutral Referee

GSR/mr

Issued in Washington, D. C.

April 17, 1985

STATE OF NEW YORK)

: SS.

COUNTY OF NASSAU)

On the 17th day of April, 1985, before me personally came and appeared GEORGE S. ROUKIS, to me known 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, 1986

