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Public Law Board No. 6849

Parties to Dispute

United Transportation Union	)	
	)	Case 5/Award 5
	)	
Burlington Northern and Santa	)	
Fe Railway Company	)	

Statement of Claim

The claim on behalf of conductor S. 1. Stacy and brakeman T. R. Palmer, Jr. Remedy requested is payment for 100 miles HO for having to ride side of car to protect the point for over 2 miles.

Background

A claim was filed by conductor S. L. Stacy and brakeman T. R. Palmer on grounds that they were required to hang on the side of a car for an extended period of time in violation of Article X of the 1982 National Agreement. The claim was denied and it was subsequently docketed before this Board for [mal and binding adjudication.

Discussion & Findings

The instant case deals with the interpretation of the National Agreement with respect to procedures related to the elimination of cabooses from trains and the extent to which this affects members of the UTU craft.

Pursuant to recommendations by PEB No. 195, which was established by EO 12373 in July of 1982, Article X of a National Agreement became effective on October 15, 1982. This Article deals with cabooses and states the following.

Pursuant to the recommendations of Emergency Board No. 195 the elimination of

requirements for or affecting the utilization of cabooses, as proposed by the Carriers in their notice served on or about February 2, 1981, will be handled on an individual railroad basis in accordance with the following agreed upon procedures and guidelines.

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

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

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### Section 3. Conditions

(d) Crew members will not as a result of the elimination of cabooses be required to ride on the side or rear of cars except in normal switching or service movements or reverse movements that are not for extended distances. 1

Thereafter on November 8, 1982 the Santa Fe railroad, one of the predecessor railroads to the BNSF filed a Section 6 notice to eliminate cabooses "...in all through freight service protected by pool freight crews and by notice of September 13, 1983 to eliminate the use of cabooses in all local, road switcher and yard services..." according to the history leading up to the January 1, 1984 Agreement between the former ATSF and the UTU committee involved in this case, as outlined in the union's submission to this Board. An Agreement was subsequently signed on December 7, 1983 between the ATSF predecessor of the BNSF and the UTU committee involved in this case. Effective date of that Agreement was January 1, 1984 as noted. That Agreement provided for elimination of cabooses and concurrently quid pro quo rights to members of the UTU craft affected

by this maneuver.

Pertinent language of that January 1, 1984 Agreement is cited here for the record.

In disposition of Carrier's Notice of November 8, 1982 of its intent to eliminate use of cabooses in all through freight service protected by pool freight (chain gang) crews and Carrier's Notice of September 19, 1983 of its intent to eliminate use of cabooses in all local, road switcher and yard service, pursuant to Article X of the October 15, 1982 UTU National Agreement,

It Is Agreed:

- 1) Cabooses may be eliminated from all trains operated in any class of road service and in yard service.

NOTE: The foregoing does not prevent Carrier from using a caboose if it so desires.

- 2) When a pool or assigned caboose is eliminated, each protected member of the train crew will be allowed six (\$.06) cents for each road mile actually run or deadheaded in each direction with a minimum of \$6.00 which allowance will be in addition to all other earnings for the trip or tour of duty. This allowance (\$.06) will not be subject to any future wage increases, including general or cost-of-living adjustments.

The instant case has its genesis in a pay claim filed by the two Claimants on December 1, 1999 for 100 miles for having ridden on the side of a car for over two miles on November 11, 1999 through a location called Gary Grimm which is between Silsbee and Dayton, Texas. The claim states that there were no road crossings on the stretch of track running from 0.0 to 2.1 on this stretch. In working through freight service between Silsbee and Dayton the crew was required to ride the side of a car while the train was making a reverse movement.

The claims were denied. The superintendent's records show that a caboose was available but was not used for the Silsbee-Dayton run. The Carrier goes on to state in denying the claims that the Claimants were working between Silsbee and Dayton on trackage rights territory and the job in question "...was never assigned a caboose..."<sup>2</sup> So the claim could not be valid, according to the Carrier, because of the elimination of a caboose. The thrust of this argument is that there was no caboose to eliminate.

A review of the record fails to persuade the Board that the issue of trackage rights has any bearing on this case. That issue is not pertinent to the narrow issue under scrutiny here.

The 1984 Agreement states that cabooses "...may..." be eliminated. If one is available and not used, irrespective of prior history, reasonable minds could but conclude that it has been eliminated. Further, when members of the craft are required to ride a car because of the absence of a caboose they clearly come under the protection of the Article X (d) of the 1982 Agreement which states that "... crew members will not as a result of the elimination of cabooses be required to ride on the side or rear of cars except in nonnal switching or service movements or reverse movements that are not for extended distances....".

In view of these considerations there remain only two issues to resolve here. The first is whether 2+ miles falls under the aegis of "...for extended distances..." The second

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United Transportation Union. Employees Exhibit 2.

<sup>2</sup> Because it did not exist prior to the UPSP merger in August of 1996.

is what the remedy ought be if the Board concludes that 2+ miles represent a violation of the language found in the 1982 Agreement.

With respect to the "...for extended distances..." issue this is not a case of first impression. In 1992, after the Article X of the National Agreement had been in effect already for quite some time Award 28 of PLB 4833 concluded as follows when asked inter alia to interpret this phrase:

"... What the Board finds is dispositive in that the negotiators of the October 1982 National Agreement in agreeing to the elimination of cabooses did not envision that road crews in yarding their trains would be compelled to ride extended distances on the side of the cars...road crews should not be required to ride more than one mile on the side of the car in yarding their trains..."

That Award of PLB 4833 was but consistent with an earlier one issued off of Arbitration Board No. 419 in 1984 which had ruled:

"...The Organization has requested that 'extended distances' be defined. After careful consideration of the matter, it is the opinion of the Board that anything in excess of one mile constitutes an extended distance when moving from one work location to another, where such moved are presently made with a caboose..."

The Carrier argues in this case, as noted, that the move in question had never been made with a caboose. That may be. But it could have been made with one on November 11, 1999 since one was available as the Carrier readily admits. Since one was not used the Claimants had to ride a car for a distance of over two miles which, of course, is the point of this case. As early as 1984 and for years thereafter there was a pattern by arbitration Awards operationalizing the general language of contract: "...extended distances..." to mean not in excess of one mile if crew members had to ride on the side of a car absent a

caboose when covering an assignment.

There is also arbitral precedent dealing with remedy when the "...extended distances..." language is violated. A review of the Awards dealing with this shows that there is some diversity of opinion on this matter but a penalty of one fourth of a day's pay is common. The Board finds that this is reasonable and it will rule accordingly.

### **Award**

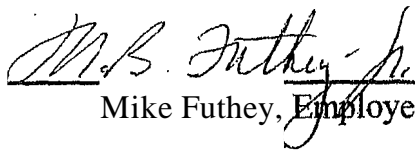
The two Claimants to this case, conductor S. L. Stacy and brakeman T. R. Palmer, Jr. shall each be paid the equivalent of two hours pro rata of pay at the rate in effect in at the time the claims were filed. The pay claims filed for November 11, 1999 are sustained. Implementation of this Award shall be within thirty (30) days of its date.



Edward L. Suntrup, Neutral Member



Gene Shire, Carrier Member



Mike Futhey, Employee Member

Date:

Nov 2, 2007