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Public Law Board No. 6849

Parties to Dispute

United Transportation Union	)	
	)	Case 7/Award 7
	)	
Burlington Northern and Santa	)	
Fe Railway Company	)	

Statement of Claim

That Claimants N. 1. Thomas and J. W. Cothorn be allowed payment for 25 miles on account of riding on side of car account no caboose for a distance of approximately 3 miles to yard on a train at Dayton, Texas.

Background

Claims were filed on January 9,2000 on behalf of conductor N. J. Thomas and brakeman J. W. Cothorn for payment of 25 miles because they were required to shove from the main line to yard track 601 at Dayton, Texas which is a distance of about 3 miles. These claim are different with respect to fact pattern, but the issues involved are comparable to the claims already addressed by this Board in Case No.5. There is a contention here that the Claimants 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. After the claims' denial they was docketed before this Board for final and binding adjudication.

Since the two claims are identical they have been combined, therefore, into this one case.

As a separate matter, the Board is advised by the Carrier that the two claims are "pilot" claims "...for many other claims being held in abeyance..." There is nothing in the

"pilot" claims"...for many other claims being held in abeyance..." There is nothing in the submission by the union nor was there in hearing whereby it raised an objection to this position on these matters by the Carrier. The Board had not been advised exactly how many other claims are being held in abeyance. Apparently that is information that the parties already have which need not be shared with the Board in the event of a sustaining Award. Nevertheless in the event of the latter the Board will hold jurisdiction over this Award in order arguendo that it might be implemented properly. In the event of a denial Award the number of claims held in abeyance is moot.

### Discussion & Findings

While the fact pattern is somewhat different between the claims filed in this case and the claims already dealt with this Board in Case No.5 the issues at stake are the same. There is an allegation here that Article X of the 1982 Agreement had been violated because the Claimants had to ride a car in a reverse movement for an "...extended distance..." absent a caboose. That reverse movement was for "...approximately three miles..."

A review of the contractual provisions at stake and the arguments by the parties when comparing this case with those features of Case No. 5 show that they are parallel. The Board will, therefore, incorporate the discussion and rationale that is found in that earlier Award into the instant one by reference.

In view of these considerations the Board concludes that there was a violation of

Article X of the 1982 Agreement by the Carrier when the Claimants were required to ride the side of a car for some three miles to yard a train in Dayton, Texas.


For the sake of consistency the Board can find no grounds for diverging from the rationale it used in arriving at its conclusions in Case No.5 both with respect to merits as well as remedy and it will rule here accordingly. Arbitral precedent cited in that earlier Award applies equally to the instant case.

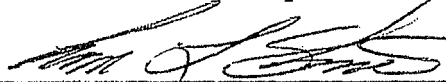
As a final matter the Carrier argues that there is a distinguishing feature in this case which is that the Claimants failed to "...provide the information that would support their claim..." In response to this the general chairman of the Organization states that the Claimants worked through freight service between Silsbee and Dayton, Texas which required the yarding of their train in Dayton. This involved the shoving of the train from the main line to the yard without a caboose which meant that the two Claimants had to ride on the side of a car for approximately three miles. This information, cited earlier in this Award, is also found on the claim ticket filed with the Carrier albeit the declaration on that ticket states that the claims lack information on the mileposts, on which employee actually rode a car, which supervisor authorized the move, and the nature of the move. Response by the general chairman is that the service handled by the Claimants on the day in question is the "...standard handling in this service..." with implication that the Carrier was aware that a move had been made, that the Claimants made it, and that its

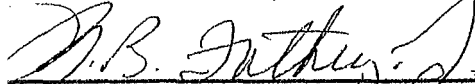
own documentation was the record of what happened. A review of the record shows that such conclusion is confirmed by the Carrier itself which abandons this technical argument at the final step in handling the claims on property by admitting that the move had indeed been made by reverting to its "...trackage rights..." argument in a May 20, 2003 declination letter to the general chairman.<sup>2</sup>

**Award**

The two Claimants to this case, Claimants N. J. Thomas and J. W. Cothorn 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 January 8, 2000 are sustained. Implementation of this Award shall be within thirty (30) days of its date. The Board holds jurisdiction over this Award until it is implemented.

  
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Edward L. Suntrup, Neutral Member

  
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Gene Shire, Carrier Member

  
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Mike Futhey, Employee Member

Date: Nov 2, 2007