

Public Law Board No. 6849

Parties to Dispute

United Transportation Union	)	
	)	Case 8/Award 8
	)	
Burlington Northern and Santa	)	
Fe Railway Company	)	

Statement of Claim

Claim Code HO account rode car UTLX 38070 from 1555 until 1625 fi'om MP 328.0 on the Lafayette Subdivision to Dayton Yard MP 1.5, a distance of approximately 2.5 miles per authorization by Dayton train master Paul to protect train during reverse move.

Background

Claims were filed for March 17, 2000 on behalf of conductor M.T. Little and brakeman R. E. McLeod for a penalty payment because they were required to ride a car for some 2.5 miles to protect the rear of a train during a reverse move.

This claim is different with respect to fact pattern, but the issue involved is comparable to the claim 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 were docketed before this Board for final and binding adjudication.

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

These claims too are to be considered "pilot claims" in accordance, this time, with

information provided by the Organization rather than the Carrier.<sup>1</sup> Absent dispute over this point by the Carrier the Board will address and rule on these claims accordingly. In order to avoid any issues related to the implementation of this Award, if it is sustained, the Board will hold jurisdiction over it. In the event that the claims are denied, such considerations become moot.

### **Discussion & Findings**

While the fact pattern is somewhat different between the claims filed in this case and the claims already dealt with by this Board in Case No.5 the issues at stake, once again, 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.

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 in a continuous move to hang onto a car during a move from Silsbee, Texas and Dayton Yard which is located within the expanded Houston Terminal.

---

<sup>1</sup> Carrier's Exhibit No\_2. February 28, 2003 letter by the GC to the Carrier's AVP of Labor Relations.

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.

There is an issue raised in this case which has not been raised in previous cases ruled on by this Board over claims involving Article X of the 1982 Agreement. New argument in this case is that the superintendent was aware of the one mile rule and that he issued, therefore, a notice advising members of the craft to get off of the side of any car they were riding in a movement and "...take a break..." and then proceed with the movement. In other words, if the members of the craft got off and then jumped back on and then got off and then jumped back on a car during any continuous movement, with "...no more than a four (4) minute...rest period..." between one mile segments this would be tantamount to properly implementing Article X and the arbitral precedent dealing with the interpretation of the language of this Article involving what we might now call the one mile rule.

This Notice No. 130 issued off the Gulf Division under date of August 27, 1998 is cited here for the record:

"Subject: Riding on Side of Car

"Employees riding on the side of cars must stop the movement prior to traveling a distance of one (1) mile and rest prior to continuing the move. This rest period will last no more than four (4) minutes and the stop must be made, whenever possible,

to clear public road crossing."<sup>2</sup>

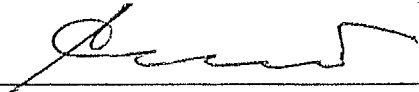
Clearly of all the various work rules that this Board has seen in this industry over the years this is one of the more curious. According to arbitral precedent cited in the record of this case dealing with tangential matters such type of work place instructions have built-in safety hazards. Obviously. This is an instruction that has no operational rationale but it was, apparently, issued simply to circumvent penalty payments for potential violations of the meaning and intent of Article X of the 1982 Agreement. Or so the Organization argues. In scrutinizing the arguments in this case the Board cannot reasonably disagree with the Organization on this point. Finally, the injunction to “... whenever possible, to clear public road crossings...” as members of the craft do their off and on dance while maneuvering a train in reverse is moot in this case since there were no such crossings. It is hard to fathom that the superintendent might not have had that piece of information at his disposal as it applied to the facts of the instant case. On the other hand, and hypothetically, were there to be such crossings at other locations who is to say that they were all conveniently and logistically located within contiguous one mile perimeters?

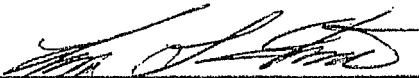
---

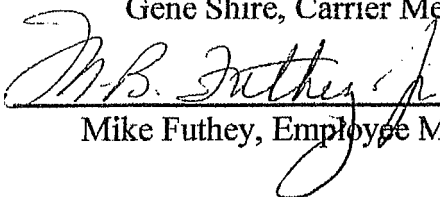
<sup>2</sup> Carrier's Exhibit No.6.

**Award**

The two Claimants to this case, Claimants M.T. Little and R. E. McLeod 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 March 17,2000 are sustained. Implementation of this Award shall be within thirty (30) days of its date. The Board holds jurisdiction over thi Award until it is implemented.

  
\_\_\_\_\_  
Edward L. Suntrup, Neutral Member

  
\_\_\_\_\_  
Gene Shire, Carrier Member

  
\_\_\_\_\_  
Mike Futhey, Employee Member

Date: Nov 2, 2007