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Mr. C.E. Walsh  
UTU General Chairman  
1551 Indian Hills Drive, #104  
Sioux City, IA 51104

August 28, 2008

RE: Yard Cabooseless operation

Gentlemen:

On July 22, 2008 we wrote to you concerning our plan to issue updated instructions concerning cab conditions claims for yard jobs on the former BN territory. In that letter we addressed our position that in order for a yard job to qualify for a cab condition claim, the job must meet the requirements as outlined in Arbitration Award 419 Q&A Number 9, which is further supported by PLB 6532. Stated more simply, in order to be compensated for a cab conditions claim, a yard job must meet both of the following requirements: the yard job must 1) be a transfer movement, and 2) be required to ride the side of a car in excess of one (1) mile.

It appears that some claim handling of yard cab conditions in the past has been inconsistent with the two awards identified above. This message is to clarify again the standards concerning cab condition claims for yard operations and our position moving forward.

This is a reminder that the new instructions will go into effect on September 15, 2008. Labor Relations would appreciate your assistance in communicating this to those you represent.

Please respond no later than September 8, 2008 if you have further information would like us to consider.

Sincerely,

Milton H. Siegele, Jr.

Attachment: July 22, 2008 Letter and PLB 6532, Award 5

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OFFICE OF THE  
GENERAL CHAIRMAN  
UTU



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July 22, 2008

RE: Yard Cabooseless operation

Gentlemen:

A question was brought to our attention concerning cab conditions and yard assignments. The question was "Is a yard job required to be transfer job in order to receive Cab Conditions Claims?"

Our research indicated the question had been asked and answered in the past (in Arbitration 419 as well as PLB 6532, Award 5), that a yard job is required to be a transfer job in order to receive Cab Conditions Claims. Additionally, in order for a job to be considered a transfer job, a switchman needs to have been required to ride the side of a car in excess of one mile.

It appears that some claim handling of Cab Conditions Claims in the past has been inconsistent with the two awards listed above. This letter is to address our position concerning Cab Conditions for yard operations moving from this date forward. We are issuing instructions that yard Cab Conditions Claims should not be paid unless the job claiming such was 1) a transfer movement, and 2) required to ride the side of a car in excess of 1 (one) mile.

On the former BN, all committees were a part of the same Arbitration 419 hearings and arbitral decision by Referee Roukis. In Arbitration 419, the Parties jointly formulated a mutually agreed upon settlement of the answer to question number nine:

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

The answer was:

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

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- 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 as 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's operating rules, bulletins or special instructions, or when required by the yardmaster or officer in charge.*

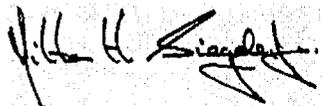
PLB 6532 Award 5, addresses a claim that GN Yard General Chairman Snyder progressed to arbitration. The claim was based on a yard crew operating under the former GN Yard Agreement. While GN Yard Rule 63 required a caboose on all transfer jobs, Arbitration 419 modified that requirement in Q&A No. 9. The facts in that case for Award 5 involved a Dilworth Transfer Yard crew who pulled cars between a yard and the main line. The lead locomotive did not have a conductor's desk and the crew claimed 2 hours cab condition account they were required to fill out a signal awareness form.

In that case, Neutral Vaughn reiterated Arbitration Award 419 in that the assignment at hand did not meet the definition of a transfer run for which a caboose would have been required. In his Award 5 he specifically addressed that the job was "not a run between a yard and 1) foreign line interchange tracks, 2) an industrial complex, or 3) another, separate yard as contemplated by the governing agreement. Neither did the assignment require any crew member to hang off the side of a car."

As this question has been asked and answered, a Cab Condition claim will need to meet the requirements of 1) a transfer movement and 2) required to ride the side of a car in excess of one (1) mile, in order to be considered for payment.

Please respond no later than August 15, 2008 if you have further information would like us to consider.

Sincerely,



Milton H. Siegele, Jr.

Attachment: PLB 6532, Award 5

PUBLIC LAW BOARD 6532

In the Matter of the Arbitration Between:

**BURLINGTON NORTHERN SANTA FE  
RAILWAY COMPANY**

and

NMB Case No. 5  
Claim of E. H. Shaw  
And W. J. Gabbert

THE UNITED TRANSPORTATION UNION

**STATEMENT OF CLAIM:** Claim two (2) hours pay, at the appropriate rate, for the Dilworth Switch Foreman E. H. Shaw and Helper W. J. Gabbert, for August 18, 2000, in addition to all other compensation received.

**FINDINGS OF THE BOARD:** The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant(s) employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the Parties, claim and subject matter herein, and that the Parties were given due notice of the hearing which was held on August 16, 2002 at Washington, D.C. Claimants were not present at the hearing. The Board makes the following additional findings:

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Trainman and Yardman crafts.

Claimants were assigned to yard service at Dilworth Yard and were assigned a yard engine. As is the case with most, if not all, of Carrier's yard engines, the engine to which Claimants were assigned lacked a writing desk and light. The work assigned to Claimants on the date at issue included operating outbound train M-FARLINI-18A from Yard Track 501 to the Dakota Main Line. The entire movement took place within the consolidated Fargo-Dilworth Terminal.

The Carrier had in place a new rule requiring crews to complete a signal awareness form confirming movements, times by signals and signal aspects. Claimants were instructed to complete the form. They complained to management that the engine to which they were assigned did not include a desk or directional map light, a lack which management acknowledged; but they were instructed to complete the form anyway, which Claimants did. The movement included two controlled signals, for which Claimants noted the relevant information on the form.

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Claimants filed a claim for two hours pay each because the locomotive they operated lacked a desk or light for paper or form work. The Carrier declined the claim as without basis; the Organization appealed the denial and, as the claims were not resolved on the property, they were presented to this Board for resolution.

**POSITIONS OF THE PARTIES:** The Organization argues that Claimants are entitled to two hours' pay because the history on the property was that, in return for the elimination of cabooses in yard service, the Carrier agreed to make modifications to locomotives to provide crews with places to do their work. The Organization complains that the Carrier required the crew to complete the signal awareness form without providing a locomotive with the required equipment. The Organization contends that Dilworth is the only terminal where completion of the signal awareness form is required.

The Organization argues that crews have not previously been required to fill out the signal awareness form underway. It contends that the work required of the crew was not merely writing down an instruction, as may have been the case in the past; instead, the form constitutes maintaining records - the signal awareness forms - under way. Previously, maintains the Organization, employees have not maintained such records underway, but have stopped to do so.

The Organization concedes that crews have jotted things down on switch lists without having access to a table and light; but it asserts that where the Carrier requires completion of paperwork underway, the Agreement requires a horizontal writing service and adequate light. The Organization asserts that it is not asking for modifications to all locomotives; but it contends that, when Carrier requires additional duties, it must give crews the proper facilities. The Organization maintains that the Carrier's suggestion that crews simply write on their knees on the back of folders does not meet the requirements of the Agreement. The Organization asserts that this claim is not for the purpose of obtaining money; it simply wants the benefit of the cab improvements for its members.

As to the Carrier's point that the run is not restricted as a transfer assignment, the Organization concedes that within switching limit, Switchmen can be assigned any type of work. The work at issue was, it contends, a transfer assignment - and therefore subject to the negotiated consequences of caboose elimination is that, as the negotiators defined it, the crew was moving cars from one yard to another in excess of one mile. The

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fact that the job is not identified by the Carrier as a transfer job is, in the Organization's view, immaterial.

The Organization argues that the Carrier's action violated the Agreement and requires that the claim be sustained.

The Carrier argues that the claim simply raises an equity argument; it contends that nothing in the language of the Agreement supports the Organization's position. The Carrier points to Article 8 of the controlling Agreement, which it contends recognizes that Yardmen have always done paperwork as part of their jobs. Indeed, contends the Carrier, writing down reports and information underway, instead of stopping, is not new and does not alter the Carrier's rights. It points out that the 1985 National Agreement allows the Carrier to require crews to complete reports under pay without additional compensation. It points to Award 2012 of PLB 5512 as confirming the Carrier's right in this regard.

The Carrier asserts that the claim is simply an indirect way to obtain additional compensation for filling out a simple form. The Carrier points out that the Organization on the Union Pacific took a similar case to arbitration, but the Board rejected it. PLB 5912, Award 123. It asserts that there are no similar claims pending at other of the Carrier's terminals. The Carrier contends that the Organization's position in this case is unique and, by implication, lacks credibility.

The Carrier points out that yard cabooses existed on transfer jobs (citing Question/Answer No. 9 from Arbitration Board 419); and it asserts that the changed cab standards for yard locomotives were tied to the elimination of cabooses, pointing in support to Question/Answer 8 from Board 419. It contends that 419 conditions entitlement to the enhanced facilities on yard engines on the removal of a caboose from the particular assignment. Here, maintains the Carrier, there was no removal of caboose: the yard crew simply pulled the train through the yard so the road crew was not required to run around the tower. Thus, contends the Carrier, there would have been no caboose on the crew's assignment; and therefore, the cab standard requirement is inapplicable.

The Carrier points out that Neutral Roukis required in Question-Answer No. 9 that cabooses properly equipped will be furnished on transfer moves, which are defined to include riding on end of train. But here, points out the Carrier, employees did not ride the point in excess of the required distance, so there would have been no requirement to use a caboose and, therefore, not

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requirement that the locomotive cab in which the crew was riding include the higher standards.

As to the need of the crew for a writing surface to fill out the form, the Carrier points out that every employee has a rules binder. It cites certain Board 419 decisions as holding that is sufficient as a writing surface. So even if a writing surface were required, a binder would meet the requirement (although the Carrier contends that such a surface was not required at all).

The Carrier urges that the claim be denied as without merit.

**DISCUSSION AND ANALYSIS:** Upon the whole of the record and in consideration of the arguments, the Board is persuaded by the Carrier and concludes that the controlling Schedule Agreement was not violated by the Carrier's action. The Award so reflects.

The ruling agreement provides, at Article VIII, Section 3 (Incidental Work Rules), that employees may be required to prepare reports while under way without additional compensation. There is not, therefore, any general entitlement to additional compensation for filling out signal alert reports.

The specific requirement to furnish yard engines with a writing desk and directional lamp was adopted by the Parties as part of the 1982 National Agreement to replace work space and facilities to which a crew would otherwise have access on a caboose. Question/Answer 9 of that Agreement defined the circumstances under which a caboose would be furnished on transfer runs. The defined types of transfer runs all involved circumstances where the crew would be required to ride the side of a car to carry out the assignment.

The Board is not persuaded that the assignment at issue met the definition of a transfer run for which a caboose would have been required. It was not a run between a yard and 1) foreign line interchange tracks 2) an industrial complex or 3) another, separate yard as contemplated by the governing agreement. Neither did the assignment require any crew member to hang off the side of a car. Since no caboose would have been required for this move, but for the 1982 Agreement, the Board concludes that the enhanced cab standards for yard engines, including a writing desk and directional light, which would replace the previously-furnished facilities, did not apply.

The Organization relies in support of its position on Award No. 5 before this Board. A premise of the Award was that

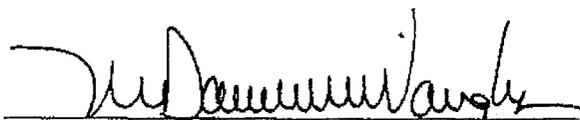
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accommodations were required as a quid pro quo for the elimination of a caboose. In this case, there is no proof that a caboose would have been required on this assignment, or this type of assignment, prior to the Roukis Award. Award No. 5 is thus inapplicable to the claim at issue.

It must be noted, in regard to the claimed need for accommodations, that the signal awareness form is was a single-page document and that, in the assignment at issue, it required only a few entries. Insofar as the record indicates, the available binder on which to place the document to write the entries would have been sufficient. Thus, the Board is not persuaded that the provision of a writing desk and directional lamp in the yard engine used by Claimants was required either on the basis of "equity" or on the basis of any general safety obligation on the part of the Carrier.

**AWARD:** The Organization failed to prove that the Carrier's action violated the applicable Agreements. The claim is denied.

Dated this 1st day of Oct, 2002.

  
M. David Vaughn, Neutral Member

  
Robert Karov, Carrier Member

  
David Snyder, Employee Member