

PUBLIC LAW BOARD NO. 6003

**Award No. 48
Case No. 52
Carrier File No. CTG 98-03-17AI
Organization File No. C-3610**

Parties to Dispute: (UNITED TRANSPORTATION UNION
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(BURLINGTON NORTHERN SANTA FE RAILWAY
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Statement of Claim: Claims of various claimants, Springfield, Missouri, claiming various amounts, various dates, which are a matter of record between the parties, "account required to perform service outside the scope of the agreement."

INTRODUCTION

This Board is duly constituted by agreement of the parties dated April 1, 1997 (the "PLB Agreement"), and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

STATEMENT OF THE CASE

The Springfield, Missouri Terminal is comprised of two yards. The primary yard in the terminal is the Kansas Avenue Yard, and the secondary yard, which is located east of the Kansas Avenue Yard, is referred to as the North Yard. The distance between the centers of these two yards is less than two miles. The claims advanced were categorized into three distinct factual scenarios by the Organization.

The claimants involved in the first scenario are Springfield, Missouri conductors who were assigned to helper service from Springfield to Thayer, Missouri. While their trains were located in the North Yard, the claimants were instructed by the yardmaster to remove end-of-train devices (EOTDs) from their outbound trains. The claimants complied with this instruction and removed the EOTDs. The claimants then attached their helper locomotives to the rear of the trains and relocated the EOTDs to the rear of their locomotives. Subsequently, the claimants performed the outbound initial terminal air test prior to departing on a road trip.

The second scenario involves yard foremen and yard helpers who were assigned to switch crews in the Kansas Avenue Yard. These claimants were instructed by the yardmaster to remove EOTDs from various cars prior to performing switching operations. The third scenario also involves yard foremen and yard helpers who were assigned to switch crews in the Kansas Avenue Yard. These claimants were instructed by the yardmaster to remove EOTDs from road trains prior to adding a "fill" or block of cars to the rear of these trains. After the

“fill” was added to these trains by the claimants, carmen performed the outbound initial terminal air test prior to the departure of the trains.

The Organization contends that in each of the abovementioned scenarios, the claimants performed service which was outside the scope of their assignment and/or the agreement rules because they were improperly required to handle the EOTDs. The Organization further asserts that the claimants are entitled to an additional day’s pay for performing such services. Under the first scenario, the Organization points out that a car department employee was on duty at the Springfield Terminal and could have been made available to handle the movement of the EOTD from the rear car of the train to the rear of the pusher locomotive. Under the second scenario, a carman performed either the inbound or outbound air test or inspection. Therefore, the Organization argues that there is no doubt that at some point a carman was available to handle the EOTD. Under the third category, the outbound train was required to have an initial terminal air test after the yard crew added the fill to the train. According to the Organization, a carman performed the outbound air test in each case, and therefore, should have been assigned to handle the EOTD. Moreover, the Organization argued that changes in the technology of the EOTD have made it possible to couple to a car with the EOTD installed. Thus, it is *never* “necessary” for a road or yard crew to handle the device.

The Carrier contends that these claims should be denied for the following reasons. First, the Carrier argues that carmen are not considered available to remove an EOTD merely because they are on duty at a terminal. According to the Carrier, “other appropriate personnel”

are available to remove an EOTD when they can immediately perform the service without delay to the operation or add materially to the operational costs. Second, yardmen can handle an EOTD in connection with their own train without additional compensation when carmen are on duty, but not available. According to the Carrier, the Organization has not established that "other appropriate personnel" were available at the time the EOTDs were handled by the claimants. In stark contrast to the Organization's assertions, Carrier argued that "blue flag" protection must be afforded any time someone other than the train or yard crew handles the device. Thus it is *always* "necessary" for the train or yard crew to handle the device in order to avoid the "blue flag" protection and associated train delay. The Carrier further argues that the appropriate remedy for violating the provisions set forth in the Arbitration Board No. 419 award is two hours.

FINDINGS

The following agreement provisions are applicable to the Board's decision. Article X, Section 7 of the 1982 UTU National Agreement provides as follows:

If a train or yard ground crew has been furnished a caboose in accordance with existing agreement or practice on a train or assignment prior to the date of this Agreement and such train or assignment is operated without a caboose other than in accordance with the provisions of this Article or other local agreement or practice, the members of the train or yard ground crew will be allowed two hours' pay at the minimum basic rate of the assignment for which called in addition to all other earnings. (Id., at 5).

The Arbitration Board No. 419 award, issued on December 19, 1983, provides, in relevant part, as follows:

The Board feels that the subcommittee's discussion proposal which carefully addressed this issue provides in part, a more realistic organizational approach for insuring its effective implementation and is consistent with the Seaboard System decision. As such, the Board finds that the affected personnel may be required to place and remove the rear-end protective-marker device under generally understood work of the craft traditions. The affected personnel may not be required to add and/or remove rear of train marker/air gauge devices (i.e so called "black boxes") at points where other appropriate personnel are on duty and available to do so, but they may be required to do so at other points and at times when it is done in connection with the road and/or yard train or cars that they handle.
(Id. at 17).

* * *

Question 4. Is it the train and/or yard crew's responsibility to place and/or remove a rear-end protective-marker device?

Answer: Yes. It is their responsibility. (See opinion herein for rationale)
(Id. at 31).

A memorandum from the Carrier's vice president labor relations, dated July 22, 1988, commonly referred to as the "1998 Understanding", or "Shire Letter," contains language which was understood by the parties to govern when train or yardmen may be required to handle EOTD when other appropriate personnel are on duty and available:

'At locations where a train is inspected by other than train or yardmen prior to departure or after arrival, and prior to switching, classification or further handling; appropriate personnel, other

than train and yardmen, will be required to handle the rear end device. When a train is to be doubled into the yard by a crew other than the inbound road crew, interchanged or handled to another location within the terminal, in whole or in part, train or yardmen may be required to handle the rear end device provided that the cut of cars or train upon which such device is located is in connection with the train or yardmen's assigned duties and the handling of the rear end device is necessary in order to accomplish the movement.'

The intent of the above is to clarify EOTD train or yardman will not be required to handle the rear-end device of the train if employees of other crafts will be performing the inbound or outbound inspections or air tests. If train or yardmen are doing their own inspection or air test or in the event the train is being delivered to a connecting carrier, these UTU-represented employees may be required to handle the rear-end device.

The Board finds both parties positions untenable, and neither is reasonable in the context of the 1988 Understanding. The awards of Arbitration Board 419 clearly intended that road and yard crews could handle the EOTD as part of their assigned duties, without additional compensation. The parties agreed in 1988 that other appropriate personnel would be used in certain circumstances. There is nothing to indicate that "blue flag" protection altered the circumstances in which those other appropriate personnel would be used, nor is there any indication that technological changes in the device itself would eliminate the handling of the EOTD by road or yard crews.

While the 1988 Understanding contains some ambiguity both as to the intent of the parties regarding the availability of other appropriate personnel, and as to when it is "necessary" for a road or yard crew to handle the device, it seems clear that an inbound road

crew could handle the end of train device on their own train if that inbound crew removed cars from the rear of the train before other appropriate personnel performed any air test or inspection. Likewise, if a yard crew removed cars from the rear of an inbound train before other appropriate personnel performed any air test or inspection, then the removal of that device by that yard crew would be permissible. In these circumstances, someone must remove the EOTD. If the cars were removed and taken to the yard for further classification or handling with the EOTD intact, then it would not be available to place on the rear of the train prior to departure. Surely, it could not have been the intent of the parties to prohibit the road or yard crew from removing the devices in such circumstances.

On the other hand, if a yard or road crew added cars to an outbound train, or if a train was made up in the yard by a road or yard crew, and thereafter a car department employee performed the outbound air test or inspection, then the Board finds no reason why it would be "necessary" for the road or yard crew to install the EOTD. The car department employee obviously would be "available" to do so at the time of the outbound test or inspection. Installation of the device by the road or yard crew in such circumstances would be improper.

This is not to say that the handling of the EOTD by an inbound crew is always permissible, or that the handling of the EOTD by an outbound crew is always improper. Our findings here cannot possibly address each and every set of circumstances that may arise. However, these findings should provide reasonable guidelines that can be applied in a variety of circumstances.

Finally, this Board concurs with the scope of the remedy awarded by the overwhelming majority of arbitral authority for comparable violations – payment of two (2) hours pay to those employees who, in violation of Article X of the 1982 UTU National Agreement, Arbitration Board No. 419 (1983), the 1988 Understanding between the parties, and in accordance with the guidelines contained in this Board’s decision, were improperly required to remove or install an EOTD in connection with their assignment. (Article X, Section 7). The Board will retain jurisdiction in the event the parties are unable to resolve all of the claims before the Board.

AWARD

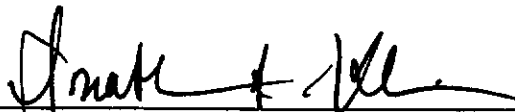
The claims are to be resolved in accordance with the Findings and Award. The Board shall retain jurisdiction for a period of 120 days from the date of issuance to address any unresolved claims.



Roger A. Boldra, Carrier Member



R. L. Marceau, Employee Member



Jonathan I. Klein, Neutral Member

This Award issued the 15th day of February, 2000.

BNSF



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*Assistant Vice President
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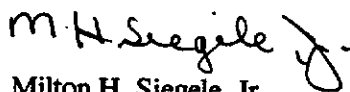
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Gentlemen:

This office has distributed the attached decision, Public Law Board 6003 Award No. 48, to Timekeeping and field officers for implementation. In our recent efforts to advise you of any changes in payment to and handling of operating employees, I am hereby notifying you that this award will be applied throughout the former BN Territories.

Please contact General Directors Randy Luther or Gene Shire if you have any questions regarding these corrections.

Sincerely,


Milton H. Siegele, Jr.

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BNSF



Memo

DATE: February 28, 2000
TO: Dave Dealy
FROM: Roger Boldra
SUBJECT: PLB 6003

Here is a copy of Award No. 48 of PLB 6003 recently rendered by Referee Klein for your review. This decision applies on the former BN Territories.

Referee Klein reviewed in detail the applicable Agreements and the 1988 Understanding that applied to road and yard crews handling rear end of train devices (ETD) in connection with their own assignment. He concluded that road and yard crews could remove an ETD from an inbound train if the carman had not already performed an inbound inspection on said train and if that road or yard crew switched, added or reduced cars from said train. And, he said that carmen would install an ETD if they performed the outbound air test.

If carmen perform the inbound train inspection before the road or yard crew removes the ETD in order to switch, add or reduce cars from said train, all members of the road or yard train crew are due the 2-hour penalty under the UTU 1982 National Agreement. The same remedy would apply to the entire road or yard train crew if the road or yard crew installed the ETD and the carmen performed the outbound air test.

There are two awards on this property upholding payment of a basic day account handling an ETD not in connection with their own assignment and this Award does not impact those decisions.

If you have any questions regarding this decision, please contact me at 352-1080.

cc: John Fleps
Carl Ice
Mark Kotter
Chris Roberts
Ray Stephens
Jeff Wright
Dave Clifton

au2499ca