NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Conductor F. N. Anderson and crew, Brakemen L. W. Walker and C. C. Stokes, for one hundred (100) miles at through freight rates account not used to move car of revenue freight from storage track, Starks, to Jefferson Island Sulphur Plant, December 1, 1950."

EMPLOYEES' STATEMENT OF FACTS: Section 6, paragraph (d), Schedule for Conductors effective May 1, 1934, and Section 6, paragraph (d), Schedule for Trainmen effective May 1, 1934, read:

"In all road service, except passenger, one hundred (100) miles or less, eight (8) hours or less (straightaway or turnaround) shall constitute a day's work. Miles in excess of one hundred (100) shall be paid for at the mileage rates provided."

Section 23, paragraph (a), Schedule for Conductors effective May 1, 1934, and Section 23, paragraph (a), Schedule for Trainmen effective May 1, 1934, read:

"Seniority and District Rights. Seniority rights of freight conductors will be confined to districts as follows:

"Kansas City to Pittsburg

"Pittsburg to Watts

"Watts to DeQueen (including Ft. Smith Branch and Arkansas Western Railway)

"DeQueen to Shreveport

"Shreveport to Port Arthur (including Lake Charles Branch)

"It is understood that a sufficient number of qualified conductors will be maintained at Leesville to protect the service Leesville and south, and may be used between Leesville and Shreveport when crews assigned to that district are required to lay off account of hours of service law or for any other emergency cause."
On December 2, 1950, Conductor F. N. Anderson submitted his Timeslip No. $\frac{1}{2}$ claiming one hundred (100) miles at work train pay account Burro Crane MW 12 used on December 1, 1950, to take a car of revenue freight from the KCS Storage Track, Starks, to Jefferson Island Sulphur Plant and under date December 11, 1950, Trainmaster R. E. Canty wrote Conductor Anderson as follows:

"Your timeslip $\frac{1}{2}$ dated December 2nd, 1950 claiming 100 miles at work train pay account Burro Crane MW 12 used 12/1 to take revenue car of freight KCS Storage track to Jefferson Island Sulphur Plant, is declined.

"Track from Starks to Jefferson Island Sulphur Plant not in service for our engines. When same has been OK'd for service we will handle such moves with road crews."

Under date January 5, 1951, Local Chairman R. D. Jones, Lodge No. 501, submitted this claim to Superintendent R. M. Blaydes, Southern Division and under date January 26, 1951, File 1-6-4, Superintendent Blaydes declined payment of the claim as made by Local Chairman Jones, saying in part:

"This car was handled by this machine December 1 instead of November 30. This was necessary due to the new track not safe for the operation of an engine. The rail was laid but the track was not ballasted.

"I do not understand the claim for 100 miles since all that would be allowed, should a road crew be stopped to make the trip, would be the mileage from Starks to the plant site, which would be 8 miles for the round trip.

"You will recall I advised you about the time this trip was made that the rail machine was handling the car due to the track not being safe to end for the operation of an engine."

Superintendent Blaydes indicated in the above quotation from his letter of January 26, 1951, that the track was not safe for the operation of an engine. However, this is denied by the Committee as engine No. 477 was used over the track all the way to Sulphur Plant at, or shortly after the time this Burro Crane handled the car of machinery, Starks to Jefferson Island Sulphur Plant. Section 6, paragraph (d), Schedule for both Conductors and Trainmen, herein quoted, definitely provide that one hundred (100) miles or less, eight (8) hours or less, (straightaway or turnaround), shall constitute a day's work, and Section 23, paragraph (a), Schedule for both Conductors and Trainmen, herein quoted, provides where seniority of Conductors and Trainmen shall apply. In the quoted matter taken from Superintendent Blaydes' letter of January 26, 1951, he admitted that the Burro Crane actually handled this car of machinery from Starks to the Jefferson Island Sulphur Plant.

Under date March 6, 1951, Mr. J. M. Prickett, Vice President in Charge of Labor & Public Relations, Kansas City Southern Lines, wrote the Employees' Representative in part, as follows:

"The move complained of was made November 30, 1950, instead of December 1, 1950, as alleged.

"This track was under construction at the time this car (Erie 10624) was handled to the plant of the Sulphur Company and the track had not yet been entirely dedicated to railway service.

"This track breaks out of the passing track at Starks and the distance from the headblock of the switch to the headblock of the first spur on which cars could be set at the Sulphur plant is 4 miles plus 599 feet. On November 2, 1950, Superintendent Blaydes issued
General Notice No. 117 showing that the first 1000 feet of the new track was serviceable. This bulletin also stated that the remainder of the track was under construction and could only be used by work trains under supervision of the Track Department. This latter part was not put in service until February 5, 1951.

This car contained a rush shipment of boilers for the new plant and the Sulphur Company requested it be moved to their plant immediately. It was handled out to the plant by the Burro rail laying machine (MW-12) because track was not serviceable for train movement. It was picked up and returned to main line by the Work Extra, Conductor Anderson, December 4th.

"Conductor Anderson was in charge of the work train, performed service as such on November 30 and was paid therefor; he would have received nothing additional for moving this car, if it had been moved by him; this was an emergency movement, track was not serviceable, and had not yet been dedicated to service. Conductor Anderson and crew did not lose any work due them.

"Claim is denied."

The work of moving cars around at points on districts to which Trainmen are assigned is work that definitely belongs to them. The excuse was given that the track was not finished so that engines could move over it; yet, when the car was unloaded an engine went out there and got it. Burro Crane MW-12 has been used more ways than one to beat crews out of time that they are rightfully entitled to.

Employees' Representative met in conference with Vice President J. M. Prickett on April 10, 1951, to dispose of a docket of cases, among which was the instant case. He again denied the claim, basing his denial on his letter to Employees' Representative under date of March 6, 1951, hereinabove quoted. Under date April 17, 1951, Vice President Prickett confirmed his denial of this claim in writing. (See Exhibit 4 attached hereto and made a part of this submission.)

Attached hereto and made a part of this submission are Exhibits 1 to 5, inclusive.

In view of the foregoing together with attachments, Employees' Representative believes an affirmative award is merited by your Honorable Board.

This claim has been handled both in writing and in conference with the Chief Operating Officer of the Carrier and has been denied by that Officer.

All data used herein has been submitted to the Carrier either in conference or in writing and Carrier is well aware of all data contained herein.

Personal appearance is not desired unless requested by the Carrier.

CARRIER'S STATEMENT OF FACTS: Starks, Louisiana (MP-736), is a station located on the Seventh Operating District, Southern Division, of the Kansas City Southern Railway, 16 miles south of DeQuincy, Louisiana (MP-720), and 31 miles north of Beaumont, Texas (MP-767). The district extends from Leesville, Louisiana (MP-669) to Port Arthur, Texas (MP-787).

At the time the claim here at issue originated, the Jefferson Island Sulphur Company was constructing a new refinery plant about five miles from Starks, Louisiana, and the Railway was building a track to serve this new plant. This new industrial track breaks out of the passing track at Starks and extends in a southeasterly direction. The length of this new track—from the headblock
leading from the passing track to the headblock of the first spur track leading into the Sulphur Company plant—was four (4) miles plus five hundred ninety-nine (599) feet.

The first 1000 feet of this new track (leading from the passing track at Starks) was bulletined as serviceable under Superintendent's General Notice No. 117, issued November 2, 1950, reading as follows:

"First one thousand feet of new Jefferson Lake Sulphur Spur breaking out passing track Starks, four poles from north end, is serviceable for all classes of power. Remainder of track is under construction and can be used by work trains under supervision of Track Department representatives."

The remainder of the track, principally that part nearest to the new plant, was not completed, was not serviceable for locomotives, and had not been approved for service on November 30, 1950. This was mainly due to the ballasting thereof not having been completed, track had not been surfaced or lined, and heavy rains had made the new dump very soft. Track was not bulletined as completed for service until February 5, 1951 (Superintendent's General Notice No. 25), although work (construction) train was operated on a part of this track in the performance of the construction work prior to that time and General Notice No. 25 reads as follows:

"General Notice No. 25

"All Concerned:

My General Notice No. 117, dated November 2, 1950 is cancelled.

Be governed by the following.

New track constructed for the Jefferson Lake Sulphur Company, breaking out passing track four poles south of north passing track switch, Starks, Louisiana, has been completed and is O.K. for use of all classes of power at a speed not exceeding 15 miles per hour.

The passing track 1500 feet long, one-third mile from Starks, is also ready for service. The run around track known as scales track near plant site can be used at both ends. The middle portion where scales are being installed cannot be used. All switches are to be left lined for the main spur. This distance from Starks to the plant is four miles.

/s/ R. M. Blaydes
Superintendent."

"Shreveport, Louisiana
February 5, 1951."

The Sulphur Company had on order and enroute a carload of boilers which were to be installed in this new plant and these boilers were anxiously awaited. When they arrived at Starks (Erie car No. 10624), the plant contractors insisted that they must have the boilers immediately in order to go ahead with construction of the plant. They insisted that they could not wait until the track was made serviceable. In order to assist in completion of construction of the plant, the carload of boilers was pushed out over the new track by a MofW Burro crane (MW-12), a self-propelled rail handling crane, on November 30, to a point where the boilers could be unloaded by the plant forces. The car remained at the plant until December 4th, when track dump had dried out and track was lined, surfaced and ballasted sufficiently to permit a work train engine shoving cars ahead of it, to approach, couple onto and pull car out and take it back to Starks.
The trainmen who are making the claim for this penalty payment (Conductor F. N. Anderson, Brakeman L. W. Walker, and C. C. Stokes) worked on November 30, were paid therefor, and therefore lost no time on that date.

POSITION OF CARRIER: We were engaged in a cooperative effort, the construction of a new sulphur refinery by the Sulphur Company and the construction of a new track to serve such plant by the Railway Company. All members of the Board are acquainted with the importance of sulphur and the necessity of increased production thereof under presently existing conditions, hence we will not burden the record by further elaboration.

The work on the plant and the track to serve it was being rushed all possible, notwithstanding weather conditions then prevalent. The carload of boilers was vital to the early completion of the refinery. The Railway was requested to move the boilers to the plant as quickly as possible. The track had not been completed sufficiently to be safe to operate a locomotive over it a sufficient distance to move the boilers to a point where they could be unloaded by the refinery forces.

By shoving cars containing ballast ahead of the engine, a work train engaged in track construction was ballasting the track as fast as ballast was available and could be unloaded and a large gang of track laborers were engaged in placing the ballast under the track and lining and surfacing track as fast as possible and weather conditions would permit; however, the Refinery people advised that to await the track being made safe to handle the carload of boilers with a locomotive would seriously delay construction of the plant and requested the boilers be placed for unloading as quickly as possible.

The Railway, in an effort to comply with such request and not delay construction, pushed the car containing the boilers out to the plant with a self-propelled rail handling crane (Burro crane) which was being used to handle rails and other heavy material in construction of the track.

The car could and would have been handled by a work train without additional cost if the track had been safe. The empty car was moved back to Starks, December 4th, by a work train without additional compensation.

There was no effort on part of Carrier to violate or break down any rule of the various schedule agreements. This was strictly a case where we had no other means by which the boilers could be moved to the plant.

As is shown in Statement of Facts, the Claimants performed service elsewhere on November 30, 1950, and hence lost no money by reason of the car being handled by the rail laying crane; therefore their claim should be denied.

We admit the rules quoted in claimants' submission, but deny that they were violated, or that they have any bearing whatever in the case here at issue.

Employees' Exhibits 1 to 5 substantially reproduce correspondence exchanged between the parties and are accepted by us as correct.

However, we deny correctness of the allegation contained in Employees' Statement of Facts, on page 2, as follows:

"However, this is denied by the Committee as Engine No. 477 was used over the track all the way to the Sulphur plant at, or shortly after the time this Burro crane handled the car. "

for the reasons that this is an attempt to mislead the Board and cause it to believe that the track was safe for the movement of an engine all the way
out to the plant and that the engine did actually move all the way out to the
plant at (on the date) the Burro crane handled the car out to the plant, viz.,
November 30, 1950. Such is not a fact.

In support of our position that such allegation of the employes is not
correct, we quote below letters addressed by our Division Engineer to our
Superintendent, dated December 22, 1950 and January 30, 1951, viz.:

"Shreveport, Louisiana
December 22, 1950
1600-23

"Mr. R. M. Blaydes
Superintendent
Shreveport, Louisiana

Dear Sir:

"Your letter of December 14th, file 1-6-4, with reference to the
movement of the car of boilers from Starks to the location of the new
sulphur plant by the Burro rail crane:

"Everyone knows that at the time it was necessary to move this
car of boilers for the industry, the track had not reached the state
of construction where it was safe for Transportation equipment to
move over it. The rails had been laid and fastened to the cross ties,
but no ballast had been applied or no surfacing had been done; and
nothing except a piece of equipment like the Burro crane could have
negotiated it.

"The move was made on November 30th, according to our Extra
Gang Foreman, right after 8:00 AM, and not on December 1st."

"Very truly yours,

(2) W. J. Lank
Division Engineer."

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"Shreveport, Louisiana
January 30, 1951
1600-23

"Mr. R. M. Blaydes,
Superintendent,
Shreveport, Louisiana

"With reference to the handling of the first car of commercial
material that went out to the plant at Starks, your file 1-6-4.

"At the time we took it out there we did not have the ballast
unloaded near enough to the plant so that it was safe for engine
to go out there; so on the 30th day of November we pushed it out
there with the crane. We had a work train in the meantime unload-
ing ballast and unloaded the ballast out quite close to the car. The
work train which unloaded the ballast with the cars ahead of the
engine shoved over there and picked up the car; so that the crane
did not bring it back.

Very truly yours,

/S/ W. J. Lank, Div. Engineer."
(These letters were not quoted to employe representatives but the facts therein were made known to them in correspondence, as is shown in Employes' Exhibits and by Statements in their submission.)

We also take exception to and emphatically deny the statement on page 3 evidently intended as "Position of Employes" but not so identified, as follows:

"Burro crane MW-12 has been used more ways than one to beat crews out of time that they are rightfully entitled to."

Further—

(1) We deny the truthfulness of any such allegation that this Carrier has, at any time or under any condition, attempted to "beat crews out of time that they are rightfully entitled to." We may have views and opinions which differ from those of Employes' representative, but no effort is being made by this Carrier to "beat" any employe out of any compensation he is entitled to.

(2) There have been some claims in the past at other points where a Burro crane has been used to perform service which trainmen and yardmen have contended were violations of their schedules. Where such work was found to have been in violation of schedules, claims were allowed. There have also been others, some now pending before this Board, where there was a difference in our views.

(3) It is our position, however, that no other claims paid, denied or pending, are relevant to or should have any bearing upon the claim here at issue and we request that the Board so find.

SUMMARY:

It is our position that in this particular case—

(1) The track was not safe to operate an engine over to handle this car of boilers November 30, 1950.

(2) Immediate delivery of the boilers was necessary to the early completion of a plant vital to the defense of our country.

(3) The claimants were used in other service on date in question and lost no time by reason of car being moved on this unfinished track by rail handling crane.

(4) That as the track was not serviceable for performance of such work by a train crew, with an engine, no schedule rule was violated; therefore,

this claim should be denied and this Board is earnestly requested to so hold.

All data contained herein have been made known to representatives of claimants, in conference or by correspondence.

Oral hearing is waived.

EMPLOYES' REPLY TO CARRIER'S SUBMISSION: No place in the Carrier's Statement of Facts do they dispute that part of this track, four (4) miles, plus five hundred ninety-nine feet (599') was not serviceable for a locomotive General Notice No. 117 issued November 2, 1950, reads:

"First one thousand feet of new Jefferson Lake Sulphur Spur breaking out passing track Starks, four poles from north end, is
serviceable for all classes of power. Remainder of track is under construction and can be used by work trains under supervision of Track Department representatives."

NOTE: Boldface supplied by Employees' Representative for emphasis.

On Page 2 of Carrier's Answer to Employees' Submission they state in part:

"The remainder of the track, principally that part nearest to the new plant, was not completed, was not serviceable for locomotives."

(Boldface supplied by Employees' Representative for emphasis)

The Carrier contradicts their own statement as emphasized above. Yet twenty-eight (28) days later MofW Burro Crane (MW 12) was used to move (Erie 10624) car loaded with boilers from storage track at Starks to this new plant, using the passing track at Starks and the full distance to the plant was about five (5) miles.

**EMPLOYEES' ANSWER TO CARRIER'S POSITION:** On Page 3 of Position of Carrier's Answer to Employees' Submission they state:

"The track had not been completed sufficiently to be safe to operate a locomotive over it a sufficient distance to move the boilers to a point where they would be unloaded by the refinery forces."

On Page 4 of Carrier's Position of their Answer to Employees' Submission they state:

"The empty car was moved back to Starks, December 4th, by a work train without additional compensation."

This move was made with only two working days between the date Burro Crane (MW 12) moved car (Erie 10624) and work train with locomotive moved empty car out of plant back to Starks. December 3, 1950 was Sunday and Employees' Representative assumes Track Department did not work this date. On Page 5 of Position of Carrier's Answer to Employees' Submission they state:

"However, we deny correctness of the allegation contained in Employees' Statement of Facts, on page 2, as follows:

"'However, this is denied by the Committee as Engine No. 477 was used over the track all the way to Sulphur plant at, or shortly after the time this Burro crane handled the car.'"

On Page 4 of Carrier's Position of their Answer to Employees' Submission they state:

"The empty car was moved back to Starks, December 4th, by a work train without additional compensation."

In Carrier's Summary on Page 7 of their Answer to Employees' Submission they state:

"(3) The claimants were used in other service on date in question and lost no time by reason of car being moved on this unfinished track by rail handling crane."

Employees' Representative does not understand that Schedule Rules are without meaning because Claimants are used in other service.
On Page 8 of Carrier's Answer to Employes' Submission they state under (4) of their Summary:

"No Schedule Rule was violated."

Employes' Representative contends that Section 23, paragraph (a) for both Conductors and Trainmen effective May 1, 1934, was violated. It reads as follows:

"Seniority and District Rights. (a) Seniority rights of freight trainmen will be confined to districts as follows:

"Kansas City to Pittsburg.

"Pittsburg to Watts.

"Watts to DeQueen (including Ft. Smith Branch and Arkansas Western Railway).

"DeQueen to Shreveport.

"Shreveport to Port Arthur (including Lake Charles Branch).

"It is understood that a sufficient number of qualified trainmen will be maintained at Leesville to protect the service Leesville and south, and may be used between Leesville and Shreveport when crews assigned to that district are required to lay off account of hours of service law or for any other emergency cause."

In view of the foregoing together with Employes' Submission and attachments thereto heretofore submitted, Employes' Representative believes this claim and requests your Honorable Board for an affirmative Award.

(Exhibits not reproduced. Page references relate to original document.)

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

In view of the facts and circumstances in this particular case and, without construing the rules of agreement relied upon by the parties as they might apply to any other case involving the same or similar set of circumstances, this claim will be denied.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.