

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: ( (Burlington Northern Railroad Company  
(United Transportation Union

STATEMENT OF CLAIM:

"Claim of the Burlington Northern Railroad Company that the claim of Spokane, Washington Yardman D. J. Basinger is without merit. The claim seeks payment of eight hours' pay, in addition to all other compensation already received, for February 23, 1988."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

By letter dated April 23, 1988, the Local Chairman appealed the instant claim stating:

"Statement of Claim:

Claim yard day account installing Rear End devices, on Train #2 at 5:20pm. and again on the Kettle turn at 8:20pm. As per Yardmasters instructions.

Statement of Fact:

Mr. Basinger is working under the Northern Pacific schedule, Utility interpretations and special agreements regarding (sic) Rear End device have not been recieved (sic) by this committee."

The Superintendent declined the Claim by letter dated May 4, 1988, stating in part:

"\* \* \*

Yardman Basinger is regularly assigned to the 3:00 P.M. Utility Position 253U at Yardley. On the date of claim, Yardman Basinger, acting in his capacity as Utilityman, did place the Federal Rear-End Devices on the train as stated. As you are aware, Paragraph 6.(b) of the December 4, 1972 Consolidated Yard Agreement, controlling at Yardley, provides:

\* \* \*

The handling of a Federal Rear-End Device is certainly consistent with the above-mentioned duties, as it necessitates hooking an air hose to the trailing car. In view of this, I fail to agree there is any basis for your claim or support for same under applicable Schedule Rules or Agreements and, therefore, your request must be respectfully declined."

The General Chairman appealed the matter by letter dated May 16, 1988, stating in part:

#### "STATEMENT OF FACT

On the above listed date, claimant, working as the 3:00 PM Utility Position, Job No. 253U, Yardley Yard was required to place the Federal Rear-End Device on Train No. 2, at 5:20 PM and Kettle Falls Turn at 8:20 PM.

#### ORGANIZATION'S POSITION

The Federal Rear-End Device is not required in the make-up operation of outbound trains by yard service crews. That equipment is only required for the operation of that train once it departs the initial terminal.

As that equipment is only required when the outbound train is ready to depart on the road trip, the responsibility to place and remove it rests with the road service crew assigned to that particular train. It is therefore requested that claimant be compensated as outlined."

The appeal was denied by the Assistant Vice President of Labor Relations by letter dated July 7, 1988, stating in part the position:

"...It is the Carrier's position that utilitymen can perform this service without additional compensation in accordance with the Consolidated Yard Agreement dated December 4, 1972, paragraph 6(b). As provided by that Agreement, the handling of federal rear end devices is certainly consistent with duties as it necessitates hooking an air hose to the trailing car.

No violation of any rule or agreement has been shown.

This claim is denied."

The matter was conferenced on the property.

The preceding four letters represents the record of the handling of the case on the property.

Concerning the Organization's Submission to this Board, the Carrier objected to 23 cited items that it contends were not discussed or brought up during the handling of the claim on the property. The Organization responded that the Carrier's letter containing the objections was nothing more than an attempt at a point-by-point rebuttal, contrary to Rule 8 of the Board's Uniform Rules of Procedure. The Organization added:

"...This Carrier knowingly participates in a claim handling process in which the history of a rule or practice is understood by both parties to such conferences, with neither side expressing a desire for detailed discussion of such information, long considered to be a factual. Their objections to the Organization providing such material for the information of the 'Division' is unfounded...."

This Board is an appellate tribunal, which resolves "minor disputes" when the parties are unable to do so themselves, after due consideration and handling in the usual manner on the property.

The parties must present the essentials of their case to each other on the property. If the parties are unable to adjust the dispute, it is the case which the parties presented on the property which is appealed to and considered by this appellate tribunal. New matters, not handled on the property, are not properly before this Board. This is required by basic fairness, for an opposing party would not have the opportunity to effectively challenge or rebutt factual assertions or theories not handled on the property which are presented for the first time in the parties' Submissions to the Board.

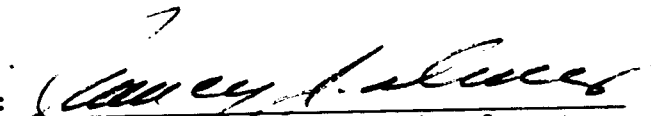
We must confine ourselves to those matters handled on the property. Strictly limited to the very limited record properly handled on the property in this case, we are compelled to deny this claim since the Organization did not demonstrate that the Agreement was violated. This denial is a very narrow one, and is not intended to set a broad precedent for future cases involving Utilitymen placing end-of-train devices on trains. The Organization's case before this Board is very different than that handled on the property. It may or may not have merit. The parties are urged to discuss the general matter of using Utilitymen to place end-of-train devices on trains with each other based on the Organization's Submission, Arbitration Award 419, including question and answer 4, and the July 22, 1988 Carrier letter concerning the handling of rear-end devices.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1992.