Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24414
Docket No. 44082
94-1-92-1-B-2016

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

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

STATEMENT OF CLAIM:

"Can Conductor W.A. Snyder, Brakeman T.L. Lannholm and W.L. Cleavenger make a straight pick-up at an intermediate point where a yard engine is on duty without additional compensation?"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

The Carrier has progressed this claim to the Board. The Organization had filed a claim on the property which read:

"Conductor W.A. Snyder and Brakeman T.L. Lannholm and W.L. Clevenger claim one hour punitive plus two and one have hours pro-rata at yard rates account required to perform non-permissive switching at Eola, Illinois, required to place pick up in specific classification block, October 9, 1989."

On February 11, 1991, the Organization requested that the claim be listed to a proposed Public Law Board. On 15 other dates the Organization requested additional cases be held in abeyance pending the outcome of this case. However, this case has not been heard by any PLB. The Organization has not objected to the filing of this dispute to the Board.

The facts are not in dispute. On October 9, 1989, the employees involved in this dispute were required to pick up 40 cars at Eola, Illinois, an intermediate terminal of their assignment. They made this pickup while holding on to five cars. There are yard crews employed, and were on duty when the work was performed.

The claim is based on Rule 8(h) of the Agreement which reads as follows:

> "8. (h) **Allowances:** When switching is required of road men as provided for in sections (f) and (g) of this Article, the road men performing the services will be paid on the minute basis with a minimum of one hour at the rate per hour of one-eighth of the daily yard rate, independent of the road trip, and separately in each yard in which any such service is required.
>
> If intermediate switching is required of road men in Group 2 and 3 yards and in Group 4 yards when yard engine is operated, other than as provided for in this Article except as heretofore provided for in Article 3, Section (c) and except as hereinafter provided for in cases of emergency in Article 9, and Article 10, section (b), paragraph 1, road men required to perform such yard service will be paid a minimum of two and one-half (2 1/2) hours at yard rate, independent of the road trip and separately in each yard in which such service is required, and the number of yardmen constituting a yard crew (extra, regular, or men cut off account reduction of force) available in each yard where such service is performed will be paid a minimum day at yard rates.
>
> If switching required of road men under section (c), Article 3, section (a), paragraphs 2 and 3 and section (b), paragraph 2 of Articles 5,6,7 and sections (f) and (g) of this Article amounts to 4 hours or more within any spread of 10 hours or less during period yard crew is not on duty, the number of yardmen constituting a yard crew (extra, regular, or men cut off account reduction of force) available in each yard where such service is performed will be paid a minimum day at yard rates. The provisions of this paragraph will not apply at Superior, Gillette, Akron and Seneca unless permanent yard service is established and the men used establish seniority in such yards."

The Organization also looks for support in Rule 11 (b), which reads:

> "(b) **Classifying trains enroute:** Road men will not be required to classify their trains enroute between terminals of their runs, except that in picking up cars at intermediate stations between terminals of their runs they may be required to maintain groups to be set out at intermediate yards or stations between terminals or turning points of their runs."

The crux of this case is whether making a pick up while holding on to other cars is switching which would trigger the allowance provided in Rule 8 (h). The Organization has supplied this Board with a myriad of claim settlements going back to the 1930's. However, a careful review of these settlements does not give a clear picture as to how the above provisions of the Agreement were applied.

First, numerous Awards of this Board have held that setting out or picking up cars while holding on to other cars does not constitute switching. Second, there is no evidence that the claimants were required to classify their train. The cars were placed in the track by yard crews. All the road crew did was pick them up.

While it is true that prior to the 1972 National Agreement the Carrier did on occasion pay a switch allowance to crews who held on to cars whole making a pick up, the National Agreement eliminated this payment. In SBA 140 Award No. 5863, the Board held as follows:

> "The disputed facts disclose that for many years prior to the January 27, 1972 National Agreement, the Carrier paid crews a penalty of one hour at the pro-rata yard rate when holding onto cars while making either a pick up and/or set-out at points where switchmen are employed and on duty, as well as one hour to the on-duty yard crew who otherwise would have performed the service. This was done in Mediation Agreement dated April 23, 1954. This latter agreement was subsequently modified January 9, 1970 to the extent that the one hour would apply regardless of whether a yard crew was on duty or not. No change was made in payment to the on-duty yard crew who otherwise would have performed the service.

The Board finds the Agreement dated April 23, 1954, as modified January 9, 1970, was not incorporated in the UTU General Labor Agreement effective January 1, 1973, whereas Article IX, Section 1, of the January 27, 1972 National Agreement, on the other hand, was (see Article 28, Section (a) thereof). It can reasonably be concluded therefore that the parties in negotiating and updating the UTU General Labor Agreement were in accord the one hour penalty to road and on-duty yard crews for holding onto cars was eliminated by the January 27, 1972 National Agreement. See also First Division Awards Nos. 16829, 17379, 17380, 17381, 17418, 17788, and many others which have consistently held that outs at points where yard crews are employed without incurring additional penalties. For these reasons, the Board finds no merit to the claim."

Also, in First Division Award 24102 involving the BLE and this Carrier, where a crew was required to set out 67 cars at Eola while holding on to one car, the Board held:

"We agree with Carrier that Article V. of the May 13, 1971 BLE National Agreement supersedes Item 3 of Labor Agreement 35-69. The National Agreement clearly and unambiguously provides that road freight crews may be required to make straight pick ups and set outs at an intermediate point without the payment of arbitraries. There are Awards of this Division, legion in number, which hold that a car or cars between the engine and the cars picked up or set out does not change the nature to the movement from that of a straight pick up or set out."

The 1971 BLE National Agreement is similar to the January 27, 1972 National Agreement.

It is clear that the answer to the Carrier question is yes. The Organization failed to meet the burden of proof that the Agreement was violated.

AWARD

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 18th day of November 1994.