PUBLIC LAW BOARD NO. 3882

AWARD NO. 194

CASE NO. 198

PARTIES TO
THE DISPUTE:

UNITED TRANSPORTATION UNION

VS.

CSX TRANSPORTATION, INC.
(former Chesapeake and Ohio Railway – Proper)

STATEMENT OF CLAIM:

"Claim of Conductor P. A. McKown, ID #077702, and Brakeman W. W. Hughes, ID #197823, for one (1) additional day each for May 30, 1993, account of being required to handle engines 2216-6440-2103 between Acca Yard and Fulton Yard, Richmond, Virginia."

Findings:

Acca and Fulton Yards are both within the Richmond Consolidated Terminal. On May 30, 1993, Claimants operated a train in through freight service from Gladstone to Richmond, their final terminal. After they yarded their train on No. 3 Main track at Acca Yard, they cut off their engines and placed them in the Diesel Shop at Acca Yard. They were then required to pick up different engines from the Diesel Shop and move them to Fulton Yard.

Article VIII, "Road, Yard and Incidental Work, of the 1985 UTU National Agreement, provides in part as follows:

Section 3. Incidental Work . . .

(b) Road and yard employees in engine service and qualified ground service employees may perform the following items of work in connection with their own assignments without additional compensation: . . .

(2) Move, turn, spot and fuel locomotives"

The Organization contends that moving the different locomotives after yarding their train was not work in connection with their own assignment, and therefore could not be required of them without additional compensation.

Carrier contends that the move was work in connection with their own assignment under the proper interpretation of the rule, when considered in connection with the additional moves permitted by road crews in Article VII of the 1991 UTU Implementing Agreement, pursuant to the recommendations of PEB No. 219, and the elimination of the engine exchange arbitrary in the 1985 Agreement.

There have been two awards on this property which have dealt with this very issue and have rejected Carrier's position in favor of the position of the Organization – Award No. 81 of PLB 4975 (1996) and Award No. 44 of PLB 4069 (1995). In the course of Award No. 44, sustaining claims for a day's pay at yard rate by the train crew, the Board said:

> "Section 3, Incidental Work, cannot be read without regard to the limiting connection to the employees' 'assignment', which was, of course, to complete its road trip. The movement of Engine 7583 simply was not shown to be involved with that assignment."

In Award No. 81, Carrier argued that the service performed by the outbound road crew – yarding an inbound crew's train – was permissible under Article VII of the 1991 Implementing Agreement, written pursuant to the recommendation of PEB 219. The Board said:

"The Chairman of this Board was also the Chairman of PEB 219. Nothing in the record of PEB 219 supports the carrier argument that the recommendations of that PEB gave the carriers the right to combine road and yard work except where the work was performed in connection with the regular road assignment of the crew."

Award No. 81 has recently been cited with approval in NRAB First Division Award No. 24828 (1997).

Carrier urges this Board to overrule the cited awards on the property in the light of awards elsewhere which have reached a different result, maintaining both that those awards are correct in their interpretation of the rules involved, and that competing railroads have a competitive advantage over Carrier because of the more favorable interpretation. We must decline to do so, first, because we believe the awards on the property have reached the correct result, and second, because in any case, where there already have been two awards on the property rejecting Carrier's position, consistency and order require that the matter must be considered to have been put to rest.

Award: Claim sustained.

H. R. Cluster, Chairman and Neutral Member

R. K. Sargent, Employee Member

W. E. Griffin, Carrier Member

9/28/98
Date