

PUBLIC LAW BOARD NO. 6305

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PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY  
(Western Region)

- and -

UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM:

Claim is made in behalf of Conductor C. I. Lindsey and Brakeman B. L. Ball for three hours and 45 minutes initial terminal switching (ITS) at appropriate freight rates of pay for service performed at Lordsburg, New Mexico on December 9, 1998.

OPINION OF BOARD: On December 9, 1998, Conductor C. I. Lindsey and Brakeman B. L. Ball ("Claimants") were called for local freight service, operating from, Tucson, AZ (home terminal) to Lordsburg, NM (away terminal). After reporting for duty at 7:55 a.m. for train LKH55 at Lordsburg (a location where yard crews are not employed) Claimants (both pre-October 1985 trainmen), followed instructions to put their train together before departing at 11:50 AM. On the basis of this pre-departure activity, Claimants submitted the following:

Claim 3hr 45 min ITS at SP149 Yard 08 ER (sic) and instructions of MTO R. Henderson, switching begin on 0755 hrs ended at 11:40 hrs. Pulled 23 cars (GVSR132074-PLMX32710) from Trk #140 set eight cars (PLMX32710-NAHX320137) to trk #04Z set 15 cars (GVSR132074-AHX320128) to trk #140. Pulled eight cars (ATSF81388-ATSF179237) from trk#44 and set to trk #042. Pulled four cars (MJ2021-GATX97718) from trk #045 and set to trk #042. Coupled train in trk #042. E. O.T. #19557. Air test depart 11:50 hrs. If I.T.S. is denied, pay 2 hrs. 40 min I. T. D.

Carrier paid the claim for initial terminal delay ("ITD") from 9:10 AM to 11:50 AM (two hours and forty minutes) but denied the claim for an additional one hour, fifteen minutes initial terminal switching ("ITS") from 7:55 AM, the on-duty time, to 9:10 AM, when initial terminal delay began. The denial was subsequently appealed by Local Chairman T. F. Moore by letter dated January 19, 1999, wherein he relied upon Article 19(a) of the UTU Trainman's Agreement, along with Awards No. 6048 and 6049 of Special Adjustment Board No. 18 (Referee Gil Vernon) as support. Carrier denied the instant terminal switching claims at all levels of handling on the grounds that SBA No. 18 Awards 6048/49 were palpably erroneous in finding Article 19 (c) applicable to such final terminal moves. In that connection, Carrier maintains in this initial terminal switching claim, as it did before SBA No. 18 in the final terminal switching claims in Awards 6048/49, that the moves performed by Claimants on December 7, 1998 in Lordsburg, New Mexico were within the permissible moves allowed without additional compensation as provided under Article VIII of the 1985 National Agreement and Article VII of the 1991 PEB 219 Implementing document. [It is noted that the Southern Pacific Western Lines were not signatory to the 1991 PEB 219 Implementing Document until the Modification Agreement effective November 1, 1997.]

The contractual provision upon which UTU premises these claims reads in pertinent part as follows:

Article 19  
Initial and Final Terminal Switching

Section A. Trainmen in freight and mixed service who perform switching at initial terminal will be paid for all time so consumed on the minute basis at one eighth of the daily rate per hour. Time will be continuous from time required to report for duty until switching is completed and train is coupled together. Time consumed switching will be computed separately and paid for in addition to road overtime; except if the number of hours switching is not equal in money value to the sum of the money values of switching hours and road overtime hours, switching time will not be paid for and the road overtime will be calculated and paid for as if switching had not occurred.

The other Agreement provision which is at the core of this dispute is Article VIII, Section 1 of the NRLC/UTU 1985 National Agreement, as amended by the November 1, 1991 PEB 219 Implementing Agreement, (which became effective on the Southern Pacific Western Lines on November 1, 1997), reading, respectively as follows:

Road crews may perform the following work in connection with their own trains without additional compensation:

\* \* \*

(b) Make up to two straight pick-ups at other location(s) in the initial terminal in addition to picking up the train and up to two straight set outs at other location(s) in the final terminal in addition to yarding the train; and, in connection therewith, spot, pull, couple, or uncouple cars set out or picked up by them and reset any cars disturbed.

\* \* \*

(d) Perform switching within switching limits at times no yard crew is on duty. On Carrier's on which the provisions of Section I of Article V of the June 25, 1964 Agreement are applicable, time consumed in switching under this provision shall continue to be counted as switching time. Switching allowances, where applicable, under Article V, Section 7, of the June 25, 1964, Agreement or under individual railroad agreements, payable to road crews, shall continue with respect to employees whose seniority date in a craft covered by this Agreement precedes the date of this Agreement and such allowances are not subject to general or other wage increases.

\* \* \* \* \*

Pursuant to the new road/yard provisions contained in the recommendations of Presidential Emergency Board No. 219, as clarified, a road crew may perform in connection with its own train without additional compensation one move in addition to those permitted by previous agreements at each of the (a) initial terminal, (b) intermediate points, and (c) final terminal each of the moves - those previously allowed plus the new ones - may be any one of those prescribed by the Presidential Emergency Board: pick-ups, set-outs, getting or leaving the train on multiple tracks, interchanging with foreign railroads, transferring cars within a switching limit, and spotting and pulling cars at industries.

The fundamental issue presented for determination by the instant claims, *i.e.*, whether the language in the last sentence of Article VIII, Section 1(d) of the NRLC/UTU 1985 National Agreement, *supra*, preserved for trainmen whose seniority date precedes October 31, 1985 the Article 19 provisions for terminal switching compensation at a terminal where yard crews are not employed, has already been authoritatively decided by Awards 6048 and 6049 of SBA No. 18. Albeit those precedent decisions involved final terminal switching ("FTS") claims, the Parties,

contract language and fundamental issues presented are indistinguishable from those in the present case. Therefore, the following holding by SBA No. 18 in Award 6048 is equally controlling with respect to the ITS claims presented herein:

. . . The Carrier, as noted, asserts the 1985 agreement in the form of Article VIII, Section 1(b) amended Article 19 of the basic agreement. They are wrong. They are wrong because they are reading Section (b) in isolation. In reading Section 1 as a whole, it is noted Section (d) preserves local switching rules. . . Given there is an individual rule on the local property, Section (d) provides that allowance shall be preserved for the 1985 employees. Obviously, it did not preserve Article 19 for post-1985 employees.

In Award No. 6049, SBA No. 18 reaffirmed that holding, as follows:

The Board has held previously under similar circumstances (see Decision 6048) that Article 19 providing for final terminal switching was preserved, not negated, for pre-1985 employees by Article VIII, Section 1 (d) which states:

*(d) Perform switching within switching limits at times no yard crew is on duty. On carriers on which the provisions of Section 1 of Article V of the June 25, 1964 Agreement are applicable, time consumed in switching under this provision shall continue to be counted as switching time. Switching allowances, where applicable, under Article V, Section 7 of the June 25, 1964 Agreement or under individual railroad agreements, payable to road crews, shall continue with respect to employees whose seniority date in a craft covered by this Agreement precedes the date of this Agreement and such allowances are not subject to general or other wages increases. (Emphasis added)*

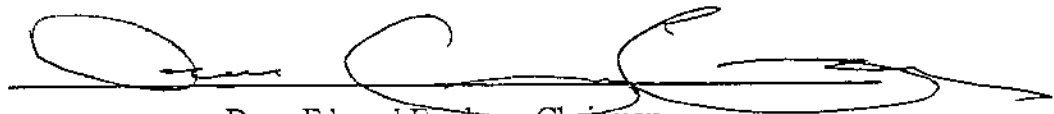
Also see Award 30, Public Law Board 4990; Award 2, Public Law Board 5052; Award 37, Public Law Board 3146; and Award 16, Public Law board 4995 for similar, if not identical, conclusions.

The fact that the Carrier Member declined to sign the foregoing Awards by the majority of SBA No. 18 does not render them any less effective or lacking in authoritative value as precedent in the present case involving the identical Parties, issues and Agreement language. [The amendment to Article VIII, Section 1 by the November 1, 1991 PEB 219 Implementing Agreement, effective on this property on November 1, 1997, is immaterial to the outcome since it made no changes in the emphasized language in the last sentence of Article VIII, Section 1(d), *supra*.] Time and again reported decisions by respected arbitrators have reaffirmed the notion that an arbitrator with a proper

regard for the arbitration process and for stability in collective bargaining, even though not technically bound, should accept an interpretation by a prior arbitration, if on point and if based in the same agreement, as binding. O & S Bearing Company, 12 LA 132, 125 (Russell Smith, 1949); Brewers Board of Trade, Inc., 38 LA 679, 680 (Burton Turkus, 1962). It is not necessary that the subsequent arbitrator endorse all of the reasoning expressed in the earlier opinion. What is important is that the earlier award contains a holding which is not palpably erroneous. Lehigh Portland Cement Co., 46 LA 133, 137 (Clair Duff, 1965). In such circumstances, arbitrators generally conclude that it would be a disservice to the parties to subject them to the unsettling effects of conflicting and inconsistent interpretations of the same contract language in the same set of circumstances. Based upon all of the foregoing, the present claims for ITS compensation in accordance with Article 19 (a) are sustained.

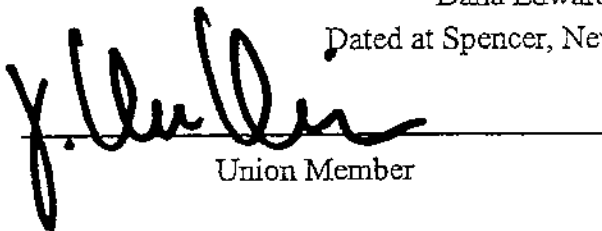
AWARD

- 1) Claim sustained.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman

Dated at Spencer, New York on February 23, 2001



Union Member



Company Member