

PUBLIC LAW BOARD NO. 5483

PARTIES	UNITED TRANSPORTATION UNION)
) AWARD NO. 29
TO	AND)
) CASE NO. 29
DISPUTE	PADUCAH & LOUISVILLE RAILWAY, INC.)

STATEMENT OF CLAIM:

Claim of Conductor J. W. Cochran, Paducah, KY for payment of three (3) hour's pay at the pro-rata rate of Road Switcher daily rate, on the date of January 7, 1996, account required to perform work of another craft.

HISTORY OF DISPUTE:

On Sunday, January 7, 1996 Claimant was working as Conductor on a three-man road switcher crew. On this Carrier road switcher crews perform yard work. When the crew arrived for work at the Paducah, Kentucky Yard at 7:00 a.m. the Trainmaster, who arrived at work at the same time, directed the crew to remove snow from switches in the yard. At that time there were no maintenance of way employees, who normally would have performed such work, in the yard. The crew complied with the Trainmaster's instructions removing snow from twenty-five switches in the yard between 7:00 a.m. and 9:30 a.m. Maintenance of way employees arrived in the yard at 9:30 a.m., but by that time snow had been removed from all switches.

The claim in this case followed. The Carrier denied the claim. The Organization appealed the denial to the highest officer of the Carrier designated to handle such

disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, *et seq.* The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

The Organization bases this claim upon the theory that the work performed by Claimant and his crew clearing snow from yard switches on the claim date was work normally belonging to the maintenance of way employees who were called and reported to service only after the Carrier's Chief Transportation Officer overruled the Trainmaster's decision not to call such employees. The fact that the maintenance of way employees were called, argues the Organization, plainly demonstrates that the work belonged to those employees. Citing arbitral authority, the Organization emphasizes that the appropriate remedy in a case such as this is a day's pay but that the claim in this case seeks only three hours, the actual time consumed cleaning the switches.

The Carrier argues that Claimant and his crew did nothing more than clean switches incidental to their yard duties. Also citing arbitral authority, the Carrier contends that in such circumstance no additional pay is due.

The record in this case is determinative of the claim herein. A national weather service report states that from midnight to 6:00 a.m. on January 6, 1996 four inches of snow fell in the Paducah area, only a trace of new snow fell in the twenty-four hour period between 6:00 a.m. January 6 and 6:00 a.m. January 7 and four inches was still on the ground at 6:00 a.m. on January 7. At 7:00 a.m. on January 7 the Trainmaster instructed Claimant and his crew to clean all switches in the yard which they would use in connection with their work. Claimant states, without contradiction by the Carrier, that maintenance of way employees or section men were not called to duty in the yard until after 7:00 a.m. on January 7 by the Carrier's Chief Transportation Officer who essentially overruled the Trainmaster's decision not to call such employees to work. The record also indicates that by calling maintenance of way employees to work in the yard on January 7, the Carrier was obligated to pay those employees overtime which it was not obligated to pay Claimant and his crew for performing the disputed work in this case.

Neither party to this dispute has cited any on-property arbitral authority to this Board. However, we find the arbitral authorities cited by the Organization far more persuasive than those cited by the Carrier.

Award No. 21 of Public Law Board No. 4857, Oct. 20, 1992 (Harris, Neutral) involved a claim similar to the one in this case. The Board noted that while the clearing of a minor obstruction from a switch by a trainman is work incidental to his normal duties, "... where there is a substantial amount of work involved in clearing the switch, that work has not historically been done by trainmen, but rather by track employees

usually represented by the Brotherhood of Maintenance of Way Employees." Thus, the rule appears to be that where cleaning snow or other obstructions from switches involves substantial rather than minor effort, such work belongs to maintenance of way or section employees rather than to trainmen. There is no indication that the rule on this property is any different.

Award No. 16 of Public Law Board No. 5437, Jul. 12, 1995 (Fisher, Neutral) involving a Carrier whose operations are very similar to those of the Carrier in this case addressed a claim involving virtually identical facts as the one in this case. Citing Award No. 21 of Public Law Board No. 4857 the Board sustained the claim. We are persuaded that the same result should obtain here.

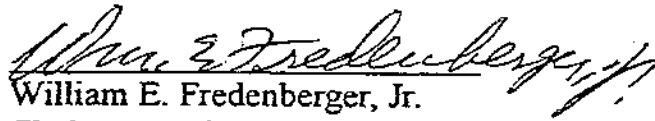
We have reviewed the arbitral authorities cited by the Carrier in this case. We find them distinguishable from the instant case on the facts as well as the rules involved.


The claim in this case seeks only three hours pay at the pro-rata rate for the work actually performed by Claimant in clearing snow from the yard switches on the claim date. In Award No. 16 Public Law Board No. 5437 upheld a claim for a day's pay under facts virtually identical to the instant case. Accordingly, we believe the claim here for three hours pay is justified.

AWARD

Claim sustained.

The Carrier will make this award effective within thirty days of the date hereof.


William E. Fredenberger, Jr.
Chairman and Neutral Member


J. D. Shepherd
Carrier Member


B. R. Wigent
Employee Member

DATED:

8-4-99