Special Board of Adjustment No. 928
Case No. 85
Award No. 85

System Docket No. OC-BLE-SD-253

Parties to the Dispute:

Brotherhood of Locomotive Engineers, AFL-CIO
and
National Railroad Passenger Corporation (AMTRAK)

Statement of the Claim:

"Claim of Amtrak Passenger Engineer R. J. Pazdzioch for eight (8) hours straight-time pay for the following dates:

January 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, 1988.
February 1, 2, 3, 8, 1988."

Opinion of the Board:

Prior to November 16, 1988, Claimant was assigned as a Passenger Engineer on Assignment EYC-5, reporting at the Chicago 14th Street Yard at 10 AM to perform yard service, Tuesday through Saturday. Said assignment included the following duties: switching cars, pulling the mail tracks, wyeing and shoving trains into Chicago Union Station -- all work which is normally recognized as passenger yard work.

Claimant's assignment EYC-5 was abolished by Carrier, effective November 16, 1988.

Organization filed a timely claim for the fifteen (15) claim dates based upon the theory that Claimant's job was abolished by the Carrier because many road engine crews impermissibly began performing yard work -- Claimant's work -- within Zone 4 which covered Chicago Union Station.

The subject claim was properly progressed on the property by the parties without satisfactory resolution; and the dispute, thereafter, was docketed for decision before this Board.

Organization contends that Paragraph 1 of Letter No. 3 of the parties' October 26, 1982 Agreement originally provided as follows:

> "1. Except where special arrangements have been agreed to by the parties, regular assignments which contemplate a combination of traditional road passenger work and traditional road freight and/or yard work are not permissible."

Subsequent to the negotiation/implementation of the aforestated contractual provision, however, on June 2, 1988, the parties negotiated another agreement which, in pertinent part, modified the previous Letter No. 3 paragraph 1. The new paragraph 1 reads as follows:

> "10. Amend Letter No. 3, paragraph (1) as follows:
>
> 1) Regular assignments which contemplate a combination of traditional road passenger work and traditional road freight and/or yard work may be established. It is understood that the provisions of Rule 6(1) will apply. The rule is not intended to result in the reduction of regular assignments. To the extent practical, the present grouping of traditional road passenger and traditional road freight and/or yard crews will be maintained."

Given the controlling language of paragraph 1, Letter No. 3 of the parties' June 2, 1988 Agreement, Organization asserts that Claimant's position was improperly abolished due to Carrier's combination of road/yard work in the instant case. According to Organization, Claimant's position continued to exist for years after the parties' December 23, 1985 "Off-Corridor Agreement" was consumated; and Organization further asserts that it is naive to think that the subject yard work, which was performed heretofore by Claimant, simply mysteriously disappeared concurrently with

Carrier's ability to create de facto combined road/yard positions by means of Carrier's misapplication of the provisions of the aforestated Letter No. 3, paragraph 1. The intent of Letter No. 3, Organization argues, was to merely absolve Carrier from arbitrary payments under specific conditions; and said Letter, Organization continues, was never intended to alter the traditional distinction between passenger yard work and passenger road work -- and, more importantly, said language was never intended "... to result in the reduction of regular assignments ..." which is precisely what happened in the instant case.

Carrier presents a simple defense in counterpoint to Organization's theory of claim in this matter. Accordingly, Carrier contends that on the claim dates in question, the road crews at Chicago were merely handling cars of their own trains in accordance with paragraph 2 of Letter No. 3 of the parties' October 26, 1982 agreement; and, therefore, no contract violation occurred. Accordingly, Carrier notes that paragraph 2 reads as follows:

> "2. Road Passenger Engineers may be required to perform any work necessary in the handling of cars of their own train or trains, provided that setting off or picking up such cars will be limited to straight moves."

Carrier further argues that Organization has failed to proffer any probative evidence whatsoever in support of its theory of claim herein that Letter No. 3, or its intent, was violated by Carrier.

The Board has carefully read, studied and considered the complete record which has been presented in this case together with the parties' respective written submissions, and we can find no factual evidence proffered by Organization which would support or sustain Organization's contention that Carrier violated any contractual provisions by its (Carrier's) actions herein. Accordingly, it has long been held in the railroad industry that the moving

party in such a proceeding -- in the instant case, Organization -- bears the burden of proving its claim that a specific contractual violation did, in fact, occur. The totality of evidence proffered by Organization in this entire case was that Claimant's EYC-3 regular yard assignment in the 14th Street Yard in Chicago was abolished by Carrier on November 16, 1988. Such action per se on Carrier's part is not a violation of the applicable provisions of the cited Letter No. 3. Moreover, Organization has failed to prove that the road crews performed work which they were not otherwise authorized to perform in accordance with paragraph 2 of Letter No. 3 of the parties' October 26, 1982 Agreement. Consequently, the Board is compelled to deny the claim(s) as filed, due to the fact that said claim(s) assume(s) a fact which has not been proved.

Award:

Claim denied.

John J. Mikrut, Jr.
Chairman and Neutral Member

L. C. Hriczak
Carrier Member

J. A. Cassidy, Jr.
Organization Member

Issued in Columbia, Missouri on October 15, 1994.