

**PUBLIC LAW BOARD NO. 6531**

**PARTIES TO DISPUTE:**

UNITED TRANSPORTATION UNION  
(EASTERN DISTRICT)

Case No. 4  
Award No. 4

VS

UNION PACIFIC RAILROAD CO.

**STATEMENT OF CLAIM:** Claim of North Platte Conductor J.W. Barraclough for an additional basic day account picking up a car behind other cars at intermediate point while working as conductor-only crew on April 17, 1993.

**FINDINGS:** This Board, upon the whole record and all of the evidence, finds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

**OPINION OF THE BOARD:** The basic facts are not in dispute. Claimant was called to operate a conductor- only assignment Grain NPSLCX-17 from North Platte to Marysville, Kansas. During the course of his trip he was instructed by the dispatcher to pick up car UP509357, which was located behind four cars at Odesa, MP 198. The engine was to remove the five cars and reset the first four cars to another track at Odessa. When the Claimant was instructed to make this move he informed the Train Dispatcher he did not have to pick up the car, claiming it was a violation of his crew consist agreement. The Train Dispatcher then contacted Claimant's supervisor, Manager Train Operations L.W. Handlin, who then had to drive to Odessa to meet with Claimant. After approximately 2 hours and 40 minutes of delay time, Claimant finally made the pick up of the one (1) car and re-set the four (4) cars back to track number 703 (ADM).

The dispute before the Board presents two questions, both of which involve the interpretation and application of the December 19, 1991 Modified Crew Consist Agreement, in particular Article I, Section 3 and 4 which read as follows:

3. The carrier will be permitted to operate conductor-only assignments in through pool freight service when such service operates under the following conditions:

- (a) There shall be no train length or car count restrictions on such service.
- (b) Trains shall be restricted to no more than three work events en route.
  - (I) A work event is considered to be a straight pick-up or set-out.
  - (ii) Picking up, setting out, or exchanging one or more locomotives and setting out a bad order car shall not be considered an event.
  - (iii) Work performed in the initial and/or final terminals will be governed by applicable rules.

NOTE 1: Each type of move, pick up or set out will be considered as separate work events for the purpose of application of this Agreement. Thus a pick up and a set out at an intermediate point will count as two work events. Hanging onto cars already in the train in order to make a pick up or set out is permissible under this agreement.

Pick up or set out as referred to above means straight pick up of a car or cars coupled together and first out that go together in one place in the train; set out means straight set out of a car or cars coupled together in the train that are set out in one movement. This note applies only to Conductor/Foreman operations and does not restrict crews with brakemen/helpers.

NOTE 2: Crews transported or deadheaded from their initial terminal to a point en route to pick up a train shall not be considered as having performed a work event, if the train is received with locomotives attached and no picking up or setting out is required other than doubling the train, if the track where the train was yarded was not of sufficient length to hold the entire train, and the coupling of a train, if it had been necessary to cut road crossings.

Crews who set out a train en route and are deadheaded or transported to the final terminal shall not be considered as having performed a work event en route if the locomotives remain attached to the train and no other work is performed other than doubling the train over to another track if the track on which the train is yarded is not of sufficient length to hold the entire train and the cutting of crossings if necessary.

The intent of this language is not to expand upon the work that a crew can perform en route.

NOTE 3: These provisions are not intended to supplant yard engines, locals, zone locals or work trains, nor is it intended that conductor-only assignments will do general switching. No Carrier supervision, official (including yardmasters), or non-craft employee will be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

4. Employees will not be required to perform any service with less than the required train crew consist specified in this Agreement nor will they be censured or disciplined in any manner or be required to lose time for refusal to do so.

Q-1: Do the provisions of this Section apply to pick-ups and/or set-outs made en route which would result in exceeding the agreed-to work event limitations?

The first question is whether the Agreement simply prohibits the move in question as the Organization contends or whether, as is the Carrier's position, the move is permitted as long as the Carrier does not exceed the "three-work event" limitation.

The Carrier is correct, to the extent a Conductor-only train is allowed to three en route work events. However, the Carrier is wrong and the Organization is right that the move in question is not a permitted work event. A "work event" under Section 3(b)(I) of the Agreement "is considered to be a straight pick-up or set-out." Note 1 to Section 3 further defines a straight pick-up/set-out as the "pick up of a car or cars coupled together and first out..." The car in question was not first out and the four cars in front of it were coupled and reset at this location. This is not a straight set-out by definition of the Agreement and accordingly, not a permissible move for a Conductor-only assignment in through pool freight service.

The Carrier did argue that the move in question should be viewed as two work events (the pick-up of the cut as one and the resetting of the cars as two) on the theory that the Carrier could have had the four cars set-out at the next station or siding (thus counting as the second work event). The problem with this is that this isn't what the Carrier asked the Claimant to do. The Carrier cannot eliminate a clear restriction in the Agreement merely because they could have accomplished the pick-up of the car in question with a completely different set or combination of moves. The fact is the Carrier re-set the other four cars to the same location. It was not a straight pick-up and the awards cited by the Carrier are not persuasive.

The second question presented by the grievance is whether under Section 4 of Article I the Grievant was permitted to refuse to accomplish the move. The Organization argues that the plain language of the Agreement gives the Claimant this right. The Carrier contends that if the move isn't a "work event" under the Agreement, Claimant can't seek the shelter carved out in the "question and answer."

The Board again disagrees with the Carrier. While they are right the Q & A doesn't apply, it ignores the broad protection in the first paragraph of Section 4. To make the move in question, a crew with more than a Conductor-only is required. Therefore, the Claimant cannot be censured or disciplined or required to lose time for refusing to make the move.

**AWARD**

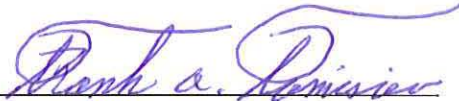
The claim is sustained.



\_\_\_\_\_  
Gil Vernon, Neutral Member



\_\_\_\_\_  
Dean Hazlett  
Union Member



\_\_\_\_\_  
Frank Tamisiea  
Company Member

Dated this 1<sup>st</sup> day of November, 2004.