

PUBLIC LAW BOARD NO. 6531

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION
(EASTERN DISTRICT)

Case No. 5
Award No. 5

VS

UNION PACIFIC RAILROAD CO.

QUESTION AT ISSUE: Do set out(s) and pick up(s) within the Omaha Metro Complex terminal, as that terminal/complex is defined in Article III (d) of the UP/CNW Merger Implementing Award/Agreement, count toward the maximum allowable work events specific in Article I, 3 (b) of the December 19, 1991 Modified Crew Consist Agreement?

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.

STATEMENT OF FACTS: To understand the question before the Board, it is necessary to go all the way back to 1992. On February 1, 1992, a Modified Crew Consist Agreement became effective on this property which allowed the Carrier to run conductor-only operations limited to three (3) work events between a crew's initial and final terminals.

In 1995 the Interstate Commerce Commission approved a transaction whereby the Union Pacific acquired control of the Chicago and Northwestern Railway Company (CN&W). Pursuant to that approval, an arbitration was conducted which produced an award which addressed labor contract issues in connection with the acquisition and merger. Because there were duplicate facilities and because the Carrier sought to benefit from the efficiencies presented by the merged operation, the award, dated February 27, 1996, provided for five (5) new consolidated terminal/complexes: Kansas City, St. Louis, Chicago, Omaha and South Morrill. The Omaha operation was designated the "OMC" and was addressed in Article III, Section D 1 as follows:

The new consolidated Omaha Metro Complex (OMC) will be the entire area and include the following trackage:

Fremont (UP Mile Post 4475 West) to Omaha/Council Bluffs (UP Mile Post 473.1-south) to Missouri Valley (CNW Mile Post 327.2-east) and return to Fremont. At California Junction, trackage north to CNW Mile Post 10.2 will be included.

For purposes of this case, the effect of the award was that in each of these terminal/complexes road crews can receive/leave and perform all permissible road/yard moves within the terminal limits as defined by the UP/CNW Merger. Thus, such moves generally speaking would not count as work events en route for purposes of the three en route work even limitation under the February 1, 1992 modified Crew Consist Agreement. There was an exception, however, carved out in the merger arbitration award. It is found in Question and Answer 14 of Volume VI, which was submitted in reference to the existing Council Bluffs-North Platte pool. This Question and Answer states:

Q14: Under Article III, Section D1, would work performed by a conductor-only crew outside the Council Bluffs switching limits (Mile Pole 7.4) but within the Omaha Metro Complex (Mile Post 44.75) at Fremont be considered as work events performed en route as they are present?

A14: Yes.

At the time the merger award was issued the Council Bluffs-to-North Platte pool was one of two operating through the OMC. The second pool had an on and off duty point at Fremont, also operating to North Platte. The terms and conditions for the freight pools operating into and out of the OMC terminal were set forth in Article II, A, B, Note 3 of Section B, and Section D of the Merger Award.

Later, on June 18, 1998, by Memorandum of Agreement, the Carrier and Organization agreed to establish an additional third pool within the OMC terminal having a designated on and off duty point and Missouri Valley operating to North Platte. In the words of the Agreement:

The interdivisional service operations between North Platte and the Omaha Metro Complex consists of one (1) double-headed pool with the terminal on/off duty points of North Platte and Missouri Valley and one (1) double-headed pool with the terminal on/off duty points of North Platte and Fremont. However, with the continued directional operations in this complex, the parties hereby agree to establish an additional double-headed pool with North Platte and Council Bluffs as the terminal on/off duty points.”

Roughly two years later on April 6, 2000 the Carrier gave the Union notice it was eliminating one of the three pools. The notice read as follows:

This refers to the abolishment of the Third (3rd) double headed pool within the Omaha Metro Complex, Council Bluffs - North Platte pool, established under Memorandum Of Agreement #2206029848 which was effective June 18, 1998.

As a result of the lack of traffic to maintain an additional Third (3rd) pool within the Omaha Metro Complex terminal, the Council Bluffs - North Platte double headed pool was dissolved on or about March 10, 2000. Various prior meetings were held with your Organization representatives to discuss the gradual and final elimination of this pool so that employees could exercise their seniority in accordance with the applicable rules. Accordingly, this letter will serve as the thirty (30) day cancellation notice to terminate Memorandum Of Agreement #2206029848 effective May 5, 2000.

Subsequent to the elimination, the General Chairman became aware that North Platte to Missouri Valley conductor-only crews were being required to set out trains at Council Bluffs. On May 23 and 26, 2000 the Organization contacted the Carrier and took the position that Council Bluffs was now an en route intermediate point between North Platte to Missouri Valley a point with the OMC terminal since there was no longer a Council Bluffs pool. More specifically, the Organization maintained pick up(s) and set out(s) at Council Bluffs counted as en route work events toward the maximum number of three (3) work events as set forth in Article I, 3 (b) of the February 1, 1992 Modified Crew Consist Agreement.

OPINION OF THE BOARD: The Board agrees with the Carrier. Question and Answer 14 related to a pool that no longer exists. Thus, the North Platte-to-Missouri Valley Pool, for purposes of work within the OMC, should be treated as other OMC pools. Moreover, there is no reason the OMC should be treated any differently than other terminal complexes.

AWARD

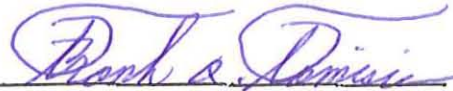
The question is resolved as set forth in the opinion.



Gil Vernon, Neutral Member



Dean Hazlett
Union Member



Frank Tamisiea
Company Member

Dated this 1st day of November, 2004.