

ARBITRATION BOARD NO. 419

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In the Matter of the Arbitration :
-between- :
CHICAGO AND NORTHWESTERN TRANSPORTATION : FINDINGS AND AWARD
COMPANY :
and :
UNITED TRANSPORTATION UNION :
Pursuant to Article X of the National :
Agreement of October 15, 1982 between the :
Carriers Conference Committee and the United :
Transportation Union :
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In accordance with Article X of the October 15, 1982 Agreement between the National Carriers Conference Committee, hereinafter referred to as the NCCC, and the United Transportation Union, hereinafter called the Organization, the undersigned was duly designated Neutral Member of Arbitration Board No. 419 to resolve disputes that had arisen regarding elimination of cabooses on the Chicago and North Western Transportation Company property.

Because of a series of postponements, hearings were not held before this Neutral until February 8 and 9 and March 20, 1984. By that time, a considerable number of awards had been issued by other Arbitration Board 419 neutrals regarding similar disputes on other railroads. No useful purpose would be served in repeating language regarding formal procedures, history and contention that

4

have already been set forth a number of times in those awards. That is not to say, however, that rulings made in the earlier cases will be automatically followed. This Neutral will give careful consideration to all of the contentions and evidence presented in this case and will exercise independent judgment in resolving the issues on this individual railroad, hereinafter called the CNW.

Article X was agreed upon in the most recent national negotiations between the Organization and the NCCC. It was adopted pursuant to recommendations issued by the Emergency Board No. 195 on August 22, 1982. In line with those recommendations, Article X provides that cabooses may be eliminated from trains in any or all kinds of service by agreement of the parties or, if necessary, by arbitration, subject to a 25% limitation on the elimination of cabooses in through freight service except by agreement. Article X deals in depth with the procedures, guidelines and conditions governing caboose elimination.

By letters of February 18, 1983, the CNW notified General Chairman T. Q. Ryan of the Organization that it intended to eliminate the use of cabooses in (a) yard and transfer service at specified points in the Twin Cities Division and (b) in local way freight and switching service on all subdivisions in the former C, St.P., M&O District.

Notices were also issued on the same date by CNW to then General Chairman (and now Vice President) R. R. Maloney of CNW's intention to eliminate the use of cabooses in through freight service between Chicago and Fremont and in local way freight switching service on all subdivisions within the C&NW Proper and in yard and transfer service on all subdivisions within the C&NW Proper. Mr.

Donald F. Markgraf has succeeded Mr. Maloney as General Chairman in view of Mr. Maloney's promotion to Vice President.

Representatives of the CNW and Organization thereafter met on a number of occasions, but were unable to resolve their differences regarding implementation of these notices. It was then, when an impasse occurred, that the undersigned was appointed Neutral Member of the Arbitration Board. When mediation conferences and arbitration hearings were held at Chicago on February 8 and 9 and March 20, 1984, as to all the CNW's notices to eliminate cabooses, UTU Vice President Maloney and General Chairmen Ryan and Markgraf represented the Organization, and Mr. John Crawford, Assistant to the Vice President, was the spokesman for the CNW. These officials attended all of the sessions.

Each party was afforded full opportunity to present its position, contentions and proof. Lengthy submissions and supplementary submissions as well as numerous exhibits were presented by each of the parties at the hearings and on other dates. The hearing of March 20, 1984 was held open to receive further argument and proof and finally on April 30, 1984, the hearings closed.

I find that there has been full compliance with all requirements, procedural and substantive, of Article X and due process.

In the course of the meetings and hearings at Chicago in February and March, the parties did reach agreement on a number of significant items. They agreed, for example, to the following points:

- (1) CNW will furnish the General Chairman with a monthly report of

through freight trains by categories, indicating whether they were operated with or without a caboose, which will identify the train by number and alphanumeric designation, initial and final points of operation and dates train operated.

(2) Additional seating of accommodations will not be required on trains which operate without a caboose where the locomotive consist has two or more cabs equipped with seats for use by ground crew members.

(3) (a) When trains are operated without a caboose, ground crew members on the head-end of such trains will be given consideration with respect to occurrences beyond a reasonable range of rear vision.

(b) The location of ground crew members required to ride trailing units in a multi-unit locomotive consist handling trains without a caboose will be taken into consideration with respect to Operating Rules requiring employes to maintain a forward lookout.

(4) Protective measures for employes whose locomotive is found to lack adequate heat or ventilation or is a health hazard because of exhaust fumes or gas emission.

(5) Ground crews will not be required to cross trestles or bridges not having walkways.

(6) Lockers at home and away-from-home terminals for employes' gear and work equipment.

(7) A caboose is recognized to be proper seating accommodations.

Portions of other provisions were also agreed to by the parties; they will be referred to when the entire item is considered.

In the discussion that follows, this neutral will mention, and make findings, with respect to proposals that remain in dispute.

3

1. Compensation

It is the Organization's position that all roadmen (through freight or otherwise) will receive an additional day's pay at the basic rate when required to perform service without a caboose.

The contention that an employe should be entitled to pay for an existing benefit or service is a familiar one. It certainly was well known to the highly experienced and unsophisticated negotiators who fashioned Article X. They were exceedingly careful to deal with major guidelines or conditions in Article X. In that setting, it is a compelling consideration that, neither expressly nor by fair inference, does Article X provide for compensation. Nor did Emergency Board 195 recommendations call for an arbitrary allowance in this situation.

I am satisfied that Article X does not contemplate the compensation in question and that this Board is without authority in this case to provide any additional compensation to the employes.

2. Yard and yard transfer service

The Organization agreed that the CNW may eliminate the use of cabooses in yard and transfer service at points where they are presently in use. However, its agreement was subject to the following conditions:

3. Cabooses equipped with fuel and such supplies and equipment as the rules require, will be furnished for yard service under the following conditions:

(a) Yard Service: Where a caboose is presently used on a job, it may be required by advance notice of the foreman if the assignment is required

to shove cars over three (3) street crossings in three (3) city blocks or more in performance of industrial service.

(b) Yard Transfer - Interchange Service:

(1) When pulling cars where yardmen are required to ride the rear car in performance of this service.

(2) When shoving cars where yardmen are required to ride the leading car in performance of this service.

(3) When yardmen are required to line switches behind them subsequent to departing a yard.

(4) Elimination of cabooses in yard service constitutes a basic day's pay payment to the crew working thereon.

In the Organization's view, these conditions are essential for safe operations as well as for reasons of comfort. It maintains in particular that a very substantial hazard is created when an assignment is required to shove cars over three street crossings, particularly in the confusion that traffic surrounding highly industrialized areas. It points out that the Kansas City Southern Railway Company recently agreed with the Organization that a caboose will be provided in that situations and also in certain interchange assignments.

The situations mentioned in the proposal, particularly in subparagraph (a), may well be cause for concern and pose individual problems. Carriers shoulder an enormous burden of responsibility for safety in train movements of all types and of course must be alert to reach realistic decisions in discharging those awesome responsibilities. There is no reason to suspect

that the CNW, experienced as it is, will not continue to weigh safety concerns against operational considerations and discharge its responsibilities for safety in the interests of all concerned. Its operations differ substantially from those of the Kansas City Southern and I am not persuaded the Kansas City agreement provides a realistic precedent here.

In any event, the right to eliminate cabooses is an important part of the consideration received by railroads in the most recent national negotiations and the CNW is entitled to the full benefit of that right and a fair opportunity to conduct operations and gain experience in exercising that right. It does not appear to have been the intent of Emergency Board 195 or the negotiators of Article X to saddle the railroads with costly restrictions in eliminating cabooses.

Paragraph 3(b)4 of the proposal is of course a request for an arbitrary allowance for yard crews. For the reasons mentioned above in considering the "Compensation" proposal, that paragraph's provision is unacceptable.

Upon weighing the respective interests of the parties and the bargaining history, this Neutral finds no justification for the conditions contained in the Organization's proposal regarding yard and yard transfer service.

3. The Organization's proposal that the 25% limitation on the elimination of cabooses in through freight service must be apportioned equitably among employes represented by the two grievance committees involved.

The Organization points out that the CNW has only ex-

pressed an intention to eliminate cabooses on the CN&W Proper. It states that the development has caused "great consternation" to the membership and contends that Article X does not contemplate a movement by the CNW to segregate a portion of the railroad for the elimination of cabooses.

The Organization's concern is understandable. Employees in one seniority district will continue to operate with cabooses while those in another district will be cabooseless, at least to the 25% level.

However, no valid ground is perceived for imposing the proposed restriction on the CNW. Article X does not require Carriers to eliminate cabooses on each seniority district. The 25% limitation clearly applies on a system-wide basis and there is no question but that Article X permits the CNW to eliminate cabooses on through freights on any seniority district. The NCCC and Organization agreed to that interpretation in the Questions and Answers of the Joint Interpretation Committee.

4. Extended periods of time and distances

In Section 3(b) of Article X it is provided that

"Cabooses will not be eliminated on certain mine runs, locals and road switches where normal operations require crews to stand by waiting for cars or trains for extended periods of time and such crews cannot be provided reasonable access to the locomotive or other appropriate shelter during such extended periods."

The term "extended periods of time," is not defined in the Agreement. It is the Organization's position that time should be defined as ten minutes.

In Section 3(d) of Article X it is provided that crew members will not be required to ride on the side or rear of cars except in normal switching or service movements that are not for "extended distances." The term "extended distances" was left undefined by the drafters of Article X. In the Organization's view, "extended distances" should be limited to one-half mile.

While ordinarily it is desirable to define contract terms, it would seem rather restrictive and impractical to do so in the instances now in question. The National Joint Interpretation Committee, appointed by the parties to the National Agreement to interpret its terms, has declined to define the terms under consideration. That Committee, composed of experienced negotiators particularly aware of all the realistic considerations that prompted the use of the contract language, has concluded that the prudent rule of reason must be applied to "extended periods of time" as used in Section 3(b) and to "extended distance" as used in Section 3(d). No valid basis is perceived for reaching a different result in these situations.

5. Single-unit locomotive conditions

(a) The parties are in accord that single-unit locomotives assigned to trains without a caboose as a result of this agreement will have individual seating accommodations for ground crew members which are safe, stationary and comfortable. Their dispute centers on the proposal that they also have individual arm rests. In CNW's view, the proposal is meritless, particularly where seats are immediately adjacent to one another; it points out that the engineer's, fireman's and head brakeman's seat on diesel

units do not have arm rests.

This proposal is not unreasonable or unduly onerous. It appears to carry out the objectives of Section 2(d) of Article X. It will be allowed for the added seats.

(b) A dispute exists as to the type of toilet to be installed in the storage compartment area of single-unit engines in caboosless trains. The Organization proposes a flush type while the CNW maintains that a "state-of-the-art" type should be used. No disadvantage to employes is perceived in the latter type of toilet. The Neutral will permit the CNW to install either type of toilet.

(c) There is no disagreement that crew members will be supplied with drinking water and moist towelettes.

(d) The Organization proposed that:

"Cabs of locomotives shall be cleaned and supplied with individual containers of fresh, sanitary drinking water, adequate space and refrigeration for water and lunches, paper towels and paper cups. Such cleaning and supplying shall be performed by employes other than ground crew members except at outlying points where other employes are not assigned."

The CNW objects to the use of "individual containers" on the ground that it makes for a littering problem along the right of way. That objection is not persuasive and I will allow the use of individual containers of water; if a better way is found to provide that important element to employes, it can be used by mutual agreement.

It is unduly burdensome, and not really necessary, for

the CNW to be required to provide refrigerators on every locomotive. It is agreeable to providing a thermal type ice-box to supplement ice-boxes or refrigerators. This would appear to adequately safeguard the interests of the employes.

Subject to these amendments, the Organization's proposal will be allowed.

(e) The parties agree that storage space for employes' gear and work equipment and hooks will be provided.

(f) The Organization proposes that "a fold-down conductor's desk" for writing of reports, with adequate lighting, be installed in the locomotive cab and that all necessary stationery and supplies be provided. The only point raised by the CNW is that a "clipboard or hard surface" should be substituted for the "conductor's desk."

While the conductor is of course entitled to proper working equipment, a desk is not realistically necessary and a clipboard provides a reasonable substitute for a desk in this situation.

(g) I find no merit in the proposal that a conductor be allowed time to complete awards after arrival at the final terminal and before terminating service. It is the CNW's province, and not the conductor's, to determine whether additional time is necessary to complete the reports.

6. Multiple-unit locomotive conditions

(a) There is no realistic necessity for the proposal that ground crew members will have designated seating; it will be disallowed. Unessential requirements of this type can produce

time-wasting and unnecessary arguments and grievances.

(b) The proposal that cabs of locomotives in which ground crew members ride shall be heated and ventilated, including a ceiling vent, is entirely reasonable and well in line with the spirit of Article X. The ceiling vent is a reasonable requirement that does not exceed the authority of the Neutral.

(c) The parties agree that at least one unit will be equipped with a toilet and supplied with drinking water and moist towelettes.

7. The following provision proposed by the CNW at the March 20, 1984 meeting is reasonable and satisfies the conditions that the Organization intended to protect in its proposal:

"Employees represented by the UTU operating without a caboose will not be disciplined or censured in any manner for refusal to leave the initial terminal of their run if the engine they are required to ride in does not meet the standards of this agreement. However, conductors will notify supervisory personnel immediately of any deficiencies in order to prevent undue delay."

8. The Organization proposed that locomotive cabs designated for crew occupancy will be cleaned, serviced and supplied by other than ground crew employees assigned to a train operating without a caboose.

This provision should be consistent with the last sentence of Finding 5(d) above. The proposal will be amended to provide that:

"Locomotive cabs designated for crew occupancy will be cleaned, serviced and supplied by other than ground crew members except at outlying points where other employes are not assigned."

9. It is proposed that ground crew members "will be required to affix or remove rear-end markers or protectors. This work will be exclusive roadmen's work." This Neutral finds no justification for this proposal.

The placement or movement of rear-end markers or protectors is not work that belongs exclusively to ground crews. Nothing in Special Board of Adjustment 235 Award 3693 provides to the contrary.

The ground crews should be relieved from the work of handling rear-end markers or protectors whenever other employes are available to perform that work. There may be occasions, however, when, as a practical matter, ground crews may attend to the work since no other employes are available; as other arbitrators have suggested, devices should be provided by the CNW to crews to facilitate the handling of that work when necessary.

10. The Organization proposes that ground crew members operating trains without a caboose be provided operable, portable radios.

In the Organization's opinion, this requirement is essential from a safety standpoint. This Neutral is not persuaded, however, that providing each ground crew member with a portable radio materially improves safety and is a condition that CNW

should reasonably be required to accept in order to eliminate cabooses.

11. Savings Provision

The CNW has proposed a savings provision that reads as follows:

"(a) This agreement is an implementation of Sections 1, 2, 3 and 4 of Article X of the UTU National Agreement of October 15, 1982 and does not set aside the provisions of Article X except as specifically provided herein in connection with Sections 1, 2, 3 and 4.

(b) This agreement does not create a basis for claim or complaint alleging that a caboose should have been used, in circumstances where no caboose was required prior to this agreement."

This is a routine "savings" provision that does not affect the rights of the parties. While it may be helpful in clarifying Article X's continued application, the Organization's representatives did not appear to be favorably impressed by the proposal.

It does not appear to be essential to this Award. It will not be accepted.

AWARD

Consistent with the provisions of Article X of the October 15, 1982 National Agreement, the Carrier (hereinabove referred to as CNW) may eliminate cabooses from those trains or assignments listed in Appendix A to this Arbitration Award subject to the conditions set forth below:

(a) There shall be a 25% limitation on the elimination of cabooses in through freight (including converted through freight) service, except as may be otherwise provided by agreement between the parties.

(b) In the selection of through freight trains from which cabooses are to be eliminated, the Carrier shall proceed on the basis of the following categories, taking into consideration there may be fluctuations in the usual number of cars handled in a given train from day to day and from point to point on the same day as cars are added or set out:

(1) trains that regularly operate with 35 cars or less;

(2) trains that regular operate with 70 cars or less which are scheduled to make no stops en route to pick up and/or set out cars;

(3) trains that regularly operate with 70 cars or less which are scheduled to make no more than three stops en route to pick up and/or set out cars;

(4) trains that regularly operate with 120 cars or less which are scheduled to make no stops en route to pick up and/or set out cars;

(5) trains that regularly operate with 120 cars or less which are scheduled to make no more than three stops en route to pick up and/or set out cars;

(6) trains that regularly operate with more than 120 cars which are scheduled to make no stops en route to pick up and/or set out cars;

(7) all other through freight trains.

(c) Implementation of the elimination of cabooses in through freight shall be phased in on the following basis:

(1) The Carrier may immediately upon the effective date of this Award remove cabooses from one-third of the trains that may be operated without cabooses;

(2) Another one-third of the cabooses may be removed thirty (30) calendar days from the date of this Award; and,

(3) The final one-third of cabooses may be removed sixty (60) calendar days from the date of this Award.

(d) The Carrier will furnish the General Chairman with a monthly report of through freight trains by categories indicating whether they were operated with or without cabooses which will identify the trains by number or alphanumeric designation, initial and final points of operation, and dates trains operated.

(e) In view of the fluctuations in traffic levels, the Carrier may operate more than 25% during a single month, but the excess is to be included in the total accumulation for the calendar year.

(1) Ground crew members of trains operated without a caboose will not, as a result of the elimination of the caboose, be required to ride on the side or rear of cars except in normal switching or service movements or reverse movements that are not for extended distances. In all cases, a prudent rule of reason must apply with respect to the meaning of "extended distances."

(2) Ground crew members will not be required to stand by waiting for cars or trains for extended periods of time and if such crew members cannot be provided reasonable access to appropriate shelter during such extended periods of time. In all cases, a prudent rule of reason must apply with respect to the meaning of "extended period of time."

(3) Single-unit locomotives assigned to trains operated in road and yard service without a caboose as a result of this Award will have individual seating accommodations for ground crew members which are safe, stationary and comfortable and are provided with arm rests.

(4) A flush-type or "state-of-the-art" type toilet will be installed in the storage compartment area of single-unit engines assigned to trains operated without a caboose for use by employes.

(5) Crew members will be supplied with drinking water and towelettes; i.e., towels for quick clean-up when soap and water are not available.

(6) Cabs of locomotives shall be cleaned and supplied with individual containers of fresh, sanitary drinking water, adequate space and refrigeration for water and lunches, paper towels and paper cups. Thermal type ice-boxes for water and lunches will continue to be provided when necessary to supplement ice-boxes or electric refrigerators on the locomotive.

(7) Storage space for employes' gear and work equipment and hooks will be provided in single-unit engines assigned to trains operated without a caboose.

(8) A clipboard for writing reports with adequate lighting, will be installed in the locomotive cab. Also all necessary stationery and supplies will be provided for preparation of reports.

(9) Additional seating accommodations will not be required on trains which operate without a caboose where the locomotive consist has two or more cabs equipped with seats for use by ground crew members.

(10) Cabs of locomotives in which ground crew members ride shall be

heated and ventilated, including a ceiling vent to maintain a comfortable temperature throughout the year.

(11) At least one unit of multiple engines assigned to a train operating without a caboose will be equipped with a toilet and supplied with drinking water and moist towelettes, i.e., towels for quick clean-up when soap and water are not available.

(12) A caboose is recognized to be proper seating accommodations.

(13) (a) When trains are operated without a caboose, ground crew members on the head-end of such trains will be given consideration with respect to occurrences beyond a reasonable range of rear vision.

(b) The location of ground crew members required to ride trailing units in a multi-unit locomotive consist handling trains without a caboose will be taken into consideration with respect to Operating Rules requiring employees to maintain a forward lookout.

(14) (a) Ground crew members will not be required to ride in a locomotive unit when such unit does not have adequate heat or ventilation in the operating compartment. If after leaving a terminal a unit in which a ground crew member is required to ride is found not to have adequate heat or ventilation, or is found to be emitting toxic or noxious gases or fumes into the cab of such unit, and the ground crew member cannot be assigned to another unit or cab, the train will be operated to the nearest point where it can be disposed of without blocking the main line or to the next nearest terminal, if such movement is safe and practicable.

(b) If the General Chairman considers that there is a problem on a certain district, or on a certain type of diesel unit, or under certain conditions, the Carrier will conduct test on trailing units or multiple-unit locomotive consists to deter-

mine whether or not exhaust fumes in operating compartments pose a health hazard to employees riding thereon. If it is determined there does exist a health hazard, then immediate arrangements will be made to insure that the employees are not subjected to such conditions.

(15) Employees represented by the UTU operating without a caboose will not be disciplined or censured in any manner for refusal to leave the initial terminal of their run if the engine they are required to ride in does not meet the standards of this agreement. However, conductors will notify supervisory personnel immediately of any deficiencies in order to prevent undue delay."

(16) Locomotive cabs designated for crew occupancy will be cleaned, serviced and supplied by other than ground crew members except at outlying points where other employes are not assigned.

(17) Ground crew members shall not be required to crosstrestles or bridges occupied by trains where there are no walkways, and will not be required to wade creek beds, sloughs or swamps to get from one end of their train to the other.

(18) Ground crew members will not be required to deadhead on engines unless they are provided seating consistent with this Award.

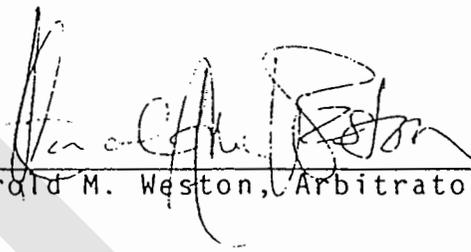
(19) The Carrier may operate a train, run or assignment with a caboose if it so desires despite the fact that it may have the right to operate such train without a caboose.

(20) Except by agreement cabooses will not be eliminated from trains that regularly operate with more than 35 cars where the crews are normally required to provide rear-end flagging protection.

(21) A locker will be assigned at the home and away-from-home terminals for employes' gear and work equipment, etc., with the locker being no less than 18" x

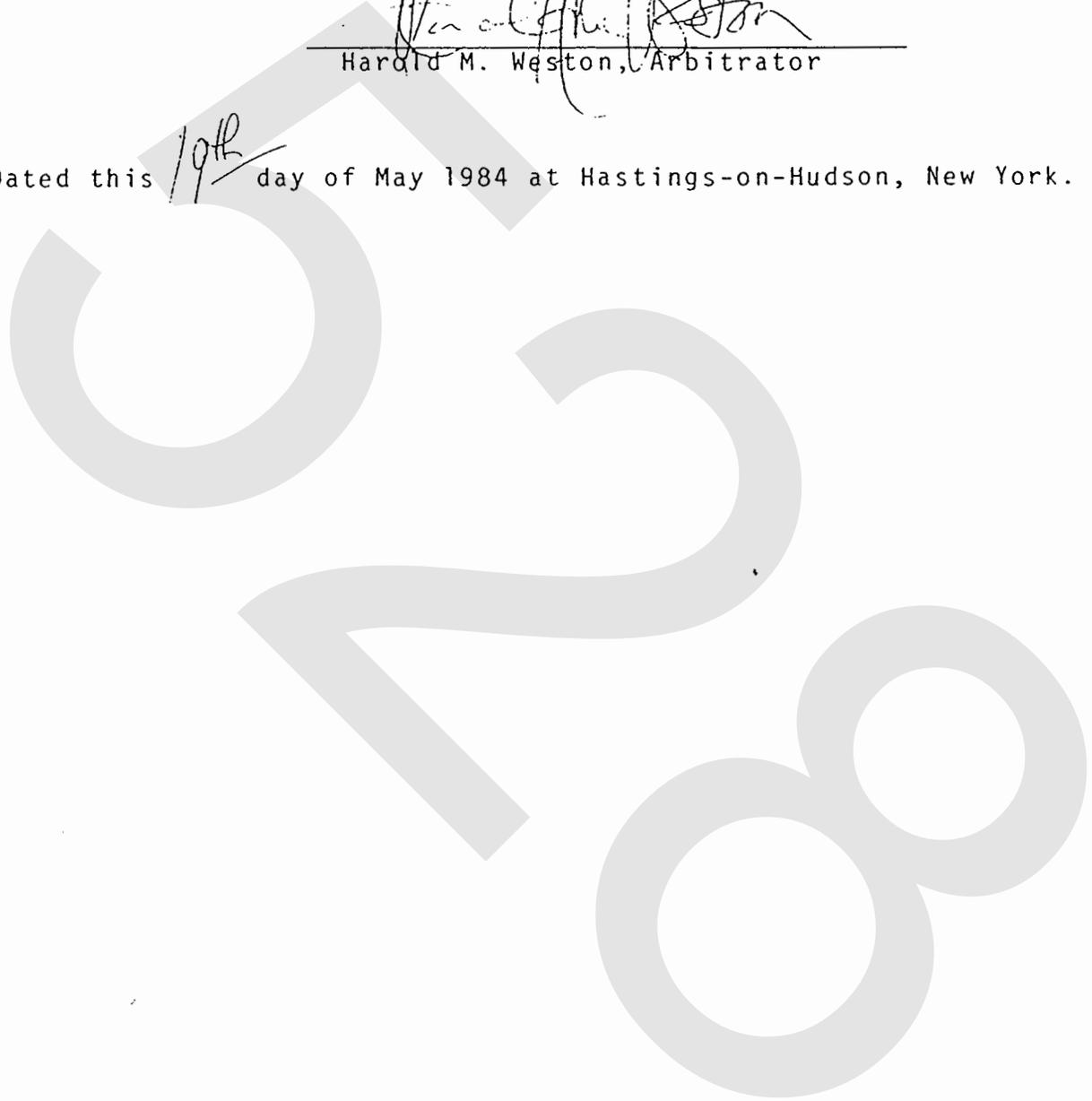
21" x 72", or the equivalent there-
of.

This Award shall become effective on the date it is
signed.



Harold M. Weston, Arbitrator

Dated this 19th day of May 1984 at Hastings-on-Hudson, New York.



APPENDIX A

Subject to the terms of this Award, the use of cabooses may be eliminated in:

1. Yard and transfer service in the Twin Cities Division of the C&NW.
2. Local way freight and switching service on all subdivisions in the former L, St.P, M&O Division.
3. Through freight service between Chicago and Fremont on the C&NW Proper.
4. Local way freight switching service on all subdivisions within C&NW Proper.
5. Yard and transfer service on all subdivisions within the C&NW Proper.