

ARBITRATION BOARD NO. 467

CHICAGO AND NORTH WESTERN)
TRANSPORTATION COMPANY)
)
and)
)
UNITED TRANSPORTATION UNION)

Pursuant to
Article VII of the
October 31, 1985
Agreement

FINDINGS:

The relevant portion of Article VII follows:

Section 2 - New Road Switcher Agreements

- "(a) Carriers that do not have rules or agreements that allow them to establish road switcher assignments throughout their system may serve a proposal for such a rule upon the interested general chairman or chairmen. If agreement is not reached on the proposal within 20 days, the question shall be submitted to arbitration.
- "(b) The arbitrator shall be selected by the parties or, if they fail to agree, the National Mediation Board will be requested to name an arbitrator.
- "(c) The arbitrator shall render a decision within 30 days from the date he accepts appointment. The decision shall not deal with the right of the carrier to establish road switcher assignments (such right is recognized), but shall be restricted to enumerating the terms and conditions under which such assignments shall be compensated and operated.
- "(d) In determining the terms and conditions under which road switcher assignments shall be compensated and operated, the arbitrator will be guided by and confined to what are the prevailing features of other road switcher agreements found on Class I railroads, except that the five day yard rate shall apply to any assignment established under this Section."

On August 6, 1986 pursuant to Section 2 of Article VII, the Carrier made a proposal to the four General Chairmen involved for a system wide road switcher agreement. Failing to reach agreement on the matter, the Carrier suggested the matter be submitted to arbitration. The Parties were also unable to agree on an arbitrator. On October 29, 1986, the National Mediation Board appointed the undersigned.

The Arbitrator met with the Parties on March 30 and on July 9, 1987 at Eau Claire, Wisconsin.

The Organization at the outset raised a threshold issue. They argue that there is an issue in this case surrounding the interpretation and application of Section 2 which must first be addressed by the Joint Interpretation Committee established under Article XVI of the October 31, 1985 Agreement. Article XVI states:

JOINT INTERPRETATION COMMITTEE

Disputes arising over the application or interpretation of this agreement will, in the absence of a contrary provision, be referred to a Joint Interpretation Committee consisting of an equal number of representatives of both parties.

If the Committee is unable to resolve a dispute, it may consider submitting the dispute to arbitration on a national basis for the purpose of ensuring a uniform application of the provisions of this Agreement.

The issue which must be addressed by the Joint Interpretation Committee, in the Union's opinion, is whether the Carrier already has a rule for road Switchers (Section 2) and already has Road Switcher assignments (Section 1). It is the Union's position that the Carrier already has a Road Switcher agreement and that arbitration is not necessary. Nonetheless they argue the ultimate determination of this is reserved to the Joint Interpretation Committee.

The Carrier, in response, notes that the Joint Interpretation Committee under Article XVI has jurisdiction " . . . in the absence of a contrary provision. . ." They contend the arbitration procedures contained in Section 2 of Article VII is such a "contrary provision." Thus, they believe this Board has the authority to decide whether Section 2 applies. Moreover, it is their position that Section 2 does in fact apply since there is, in fact, no rule which allows them to establish road switcher assignments.

There are really two threshold questions. The first question is whether this Board or the Joint Interpretation Committee has jurisdiction to determine if the Carrier has an agreement which allows them to set up road switcher agreements. The second question can only be addressed if this Board does have jurisdiction. If we have jurisdiction, it must be determined if in fact agreements allowing the Carrier to establish road switchers exist. If such agreements exist, arbitration is clearly not necessary.

With respect to the first threshold issue, it is the finding of this Board that this Board has jurisdiction to decide whether there are agreements in place allowing road switchers. Whether there are already agreements in place essentially raises the question whether the Carrier's proposal is necessary or

proper. Section 2 of Article VII clearly sets forth that the Parties failure to agree on the Carrier's proposal is subject to arbitration procedures detailed therein. The Carrier correctly points out that this is a "contrary provision" excluded from the umbrella of Article XVI. Whether a proposal is proper or necessary based on facts indigenous to the individual railroad is most reasonably reserved to the arbitration procedures under Section 2, Article VII since it is inextricably related to the terms and conditions of the proposal. It would seem that the Article XVI is broader in scope and its function wouldn't be to resolve factual disputes on individual railroads related to individual proposals. This is precisely the type of issue raised here. This is no doubt why arbitration was established under Section 2 of Article VII and excluded under Article XVI.

This brings to bear the factual question itself. On this point, the Board concludes that the Carrier does not have a rule or agreement that allows them to establish road switchers on a system-wide agreement. While the Parties have laudibly negotiated individual switch run agreements covering individual assignments, there is no systematic rule similar to road switcher agreements on other railroads allowing the Carrier the discretion to establish assignments. Thus, the Carrier's proposal is appropriate and ripe for consideration.

Given the propriety of the Carrier's proposal and their right to establish such assignments, the task squarely before the Board is the determination of the terms and conditions under which the assignments will operate. In this regard, the Arbitrator is confined to the "prevailing features" found in other road switcher agreements recognizing that the five-day yard rate will apply.

In addressing the precise features to be included in the Agreement, the Parties became deadlocked over an issue which, because of the extent and intensity of the Parties' disagreement, requires special mention. The dispute centers around the wording of a clause which would set forth that the Road Switcher Agreement would not change existing agreements except as otherwise provided. The Organization strongly insisted that such language make special reference to the June 25, 1964 agreement. Specifically, they wanted it clearly set forth in the Road Switcher Agreement that Section 7 of Article V which provides:

7. Switching service in yards by yard crews when yard crew is not on duty, as a result of the discontinuance of yard crew assignment pursuant to section 1 hereof, shall be paid for on the minute basis, with a minimum of 1 hour at appropriate yard rates.

would apply to Road Switcher assignments. It was clearly the Organization's position that Article VII of the October 31, 1985

Agreement did not negate Article V of the 1964 Agreement and further that the arbitration board had no authority to negate Article V.

It is the conclusion of the Board that the Road Switcher Agreement should only be general in respect to any statement concerning its effect on other agreements. This is the prevailing pattern with respect to Road Switcher agreements where such agreements contain language to this effect. Even the individual road switcher agreements between the Parties made subsequent to the June 25, 1964 Agreement made no special mention of the June 25, 1964 Agreement.

By concluding the Road Switcher Agreement mandated by this Award should be silent with respect to the June 25, 1964 Agreement or any other agreement, we make no finding that Section 7 does or does not apply to Road Switcher assignments. This Board has no authority to take away this benefit if it does apply or grant one where one does not exist. Our jurisdiction is substantially limited, in fact it is "confined" to writing a Road Switcher Agreement consistent to the "prevailing features" on other Class I railroads. As noted, the prevailing feature with respect to the inter-relationship between Road Switcher Agreements and specific agreements such as the June 25, 1964 agreement is silence. Any questions as to the meaning, interpretation and operation of the "prevailing features" and the effect of the October 31, 1985 Agreement on the June 25, 1964 Agreement is for another forum. This is especially true in view of the broader scope of authority granted to the Joint Interpretation Committee under Article XVI.

Accordingly, based on a review of the prevailing features of other agreements, the Board cannot accept the Carrier proposal as written and deems the following the Agreement between the Parties:

MEMORANDUM OF AGREEMENT
BETWEEN
THE CHICAGO AND NORTHWESTERN TRANSPORTATION CO.
AND
THE UNITED TRANSPORTATION UNION
GOVERNING
ROAD SWITCHERS

In accordance with Article VII Road Switchers (Section 2) of the October 31, 1985 National Agreement the following terms and conditions will apply to the compensation of Road Switcher assignments established after the date of this agreement:

1. Road switcher assignments shall be regularly assigned to go on and off duty at the same point and have clearly and reasonably defined working limits and shall be bulletined in accordance with applicable schedule rules and agreements and shall be compensated the 5-day yard rate of pay.
2. It is recognized that under present agreement rules governing road switcher assignments employees may be required to, without penalty to the Carrier, operate into, out of and through terminals of their run, or into, out of or through any point of their assignment, or over any part of their assignment as many times as may be required.
3. Agreements covering initial or final terminal switching or terminal delay or car scales will not apply to these road switchers.
4. This is a special agreement to cover the rates of pay and working conditions of employees assigned to work on road switcher runs as referred to in Section 1 hereof. It does not change existing agreements and rules applicable to other trainmen except as otherwise provided herein, all rules applicable to employees in road service remain in full force and effect for the employees assigned to the road switcher runs subject to this agreement.

AWARD

The Road Switcher Agreement between the Parties is set forth above.

Dated this 17th day of August, 1987.


Gilbert H. Vernon,
Neutral Member

INTERPRETATION

AND

SUPPLEMENTAL AWARD

MAY 25 1989

PARTIES
TO
DISPUTE:

United Transportation Union
vs.
Chicago and North Western
Transportation Company

I. BACKGROUND

On August 17, 1987 the undersigned issued an award in a dispute which then existed concerning the Carrier's proposal to establish a rule providing for road switcher assignments. The proposal and the subsequent arbitration were pursuant to Article VII of the October 31, 1985 Agreement.

The Agreement, written for the Parties by the Arbitrator, read as follows:

- "1. Road switcher assignments shall be regularly assigned to go on and off duty at the same point and have clearly and reasonably defined working limits and shall be bulletined in accordance with applicable schedule rules and agreements and shall be compensated the 5-day yard rate of pay.
2. It is recognized that under present agreement rules governing road switcher assignments employees may be required to, without penalty to the Carrier, operate into, out of and through terminals of their run, or into, out of or through any point of their assignment, or over any part of their assignment as many times as may be required.
3. Agreements covering initial or final terminal switching or terminal delay or car scales will not apply to these road switchers.

"4. This is a special agreement to cover the rates of pay and working conditions of employees assigned to work on road switcher runs as referred to in Section 1 hereof. It does not change existing agreements and rules applicable to other trainmen except as otherwise provided herein, all rules applicable to employees in road service remain in full force and effect for the employees assigned to the road switcher runs subject to this agreement."

Subsequent to the issuance of the Award the Carrier established a number of road switcher agreements which operated in excess of 100 miles. Shortly thereafter, a dispute arose concerning the correct method of calculation and paying overtime on these assignments. The matter was referred to the Arbitrator for an interpretation and a hearing was held on April 3, 1989 at Eau Claire, WI.

II. QUESTION ISSUE

"Do road switchers, which are compensated at "the 5-day yard rate of pay", also receive compensation for miles run in excess of miles encompassed in the basic day in road service?"

III. FINDINGS

The Carrier contends that the crew should be paid overtime on a time and one-half basis only when time on duty exceeds eight hours. Thus, it is their position that the correct method of compensation is strictly on a time basis, without regard for any distances which might be covered by the road switcher during its tour of duty. The Organization contends that when a crew exceeds 100 miles that they should be paid overtime on a mileage basis, the same basis as all road crews pursuant to Rule 36(a) & (s) of the CNW

Proper, Rules 8(a) and 8(b) of the Firemen's Agreement and Rules 24(a) and (b) of the Omaha, which read as follows:

"36(a) - Basic Day - In all road service, one hundred miles or less, eight hours or less (straightway or turnaround), shall constitute a day's work. Miles in excess of one hundred will be paid for at the mileage rate provided.

"36(s) - Overtime - On runs of one hundred miles or less overtime will begin at the expiration of eight hours; on runs of over one hundred miles, overtime will begin when the time on duty exceeds the miles run divided by twelve and one-half. Overtime shall be paid for on the minute basis, at a rate per hour of three - sixteenths of the daily rate.

"Fireman schedule rules 8 (a) and (b) read as follows:

Basis of Day or Overtime in Freight Service. 8.(a) In all classes of service covered by rule 7(a), one hundred miles or less (straightway or turnaround) shall constitute a day's work; miles in excess of one hundred will be paid for at the mileage rates provided, according to the engine or class of engine or other power used.

8.(b) On runs of one hundred miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by twelve and one-half. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to the engine or class of engine or other power used.

"CM&O Schedule Rules 24 (a) and (b) reads as follows:

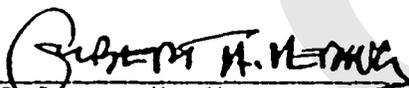
Basic Day and Overtime. 24(a) In all road service, except passenger service, one hundred miles or less, eight hours or less (straightway or turnaround), shall constitute a day's work. Miles in excess of one hundred will be paid for at the mileage rates provided.

24.(b) On runs of one hundred or less overtime will begin at the expiration of eight hours; on runs of over one hundred miles overtime will begin when the time on duty exceeds the miles run divided by twelve and one-half, overtime shall be paid for on the minute basis, at a rate per hour of three sixteenths of the daily rate."

After reviewing the record and after considering the arguments of the Parties, the Arbitrator must conclude that the Organization is correct in its interpretation of the agreement as it relates to overtime for road switcher agreements. This is primarily because of the language of Item 4. Item 4 clearly states that the road switcher agreement changed only those rules specifically noted in the agreement and that "...all rules applicable to employees in road service remain in full force and effect for the employees assigned to the road switcher runs...". Although the agreement addresses the issue of base pay, indicating that the jobs "shall be compensated at the 5-day yard rate of pay," it does not specifically address the issue of excess overtime work. Thus, the rules in effect regarding overtime are unchanged and remain in effect. Rules 36(s) and Rule 8(b), and Rule 24(b) of the respective agreements control the question at issue.

AWARD

The matter before the Board is resolved in accordance with the findings.



Gilbert H. Vernon,
Neutral Member

Dated this 13th day of May, 1989.