CONRAIL SAA

BOARD AWARDS

SYSTEM DOCKETS

AND

OTHER AWARDS OF INTEREST

COMPILED BY

AL SUOZZO
GENERAL CHAIRPERSON

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CONRAIL SAA RULES

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PLB 5059 - Award No. 17 - for the following language: "Carrier states that it is never too late to assert a contractual right." **DENIED**.

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1/4/96

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CRT-9549 - On August 30, 1992, the Claimant was first out and rested on the Rutherford Road Conductors' Extra List when Road Foreman of Engines, Cunningham handled switches for Trains MAIL-8X, CAPI-9 and MAIL-44. Claimant **allowed payment of one eight hour day**.

SBA 910 - Award No. 329 - Yardmaster operating switch - Carrier contended he did not. Claim **SUSTAINED**. Carrier should have produced a statement from the yardmaster.

PLB-5157 - Award No. 9 - Air Test performed by a Trainmaster. **SUSTAINED** in favor of the employees.
12/18/95 crbdawds

SBA 928 - Award No. 87 - BLE claim for one (1) days pay for lining a switch in advance of a train movement. **SUSTAINED.** (Filed in Rule 1 Amtrak)
12/20/96 crbdawds

RULE 1 - cont.

SBA 910 - Award No. 651 - The facts as stated in our brief read:

> "On September 1, 1992, Through Freight Assignment PIMO-1 from Conway, PA to Enola, PA arrived Enola, PA with 131 cars. The crew assigned was an Engineman and a Conductor. The Brakeman's position on the assignment in question had been eliminated by agreement between the United Transportation Union and the Consolidated Rail Corporation dated February 18, 1992.
>
> "Train PIMO-1 pulled in on Track No. 13 in the Eastbound Receiving Yard to yard the rear 81 cars. The head 50 cars were to be set-over to the Westbound Hump which required the Conductor to leave the head-end of the train and make a cut behind the 50 cars. After the cut was made, the move continued with the Conductor at the rear of the remaining 50 car train in order to stop the movement after clearing the switch for the reverse move to the Westbound Hump. In the process of moving forward, the Engineer encountered the Inbound Diesel switch which was lined against the movement. Instead of using a Utility Brakeman or waiting for the Conductor to come forward, both of which are contemplated by the Agreement of February 18, 1992, the Carrier via the West End Yardmaster ordered the Engineman to detrain, line the switch for the movement and return to the engine, after which the movement was continued.
>
> "The Claimant was first out and available at 7:55 AM on the Enola West Extra Trainmen's list when Engineman Carstetter operated the switch. He filed a claim for one (1) day's pay on the basis Engineman Carstetter's action at the direction of the Carrier had infringed on his seniority and work rights as a Trainman. Said claim was denied."

The Board ruled in part here pertinent as follows:

> "Under the circumstances of record, the Conductor on Train PIMO-1 was close enough to have been utilized to perform the function."

The only down side was that the Board ruled the proper claimant would be the Conductor on the assignment, rather than the person standing first to call on the extra list. In the future, the Conductor on the assignment should file the claim which is easier, because he/she will know of the violation.
12/20/96 crbdawds

SBA 910 - Award No. 739 - Taking a track check of cars in road territory by a Traveling Road Switcher. The cars were not cars handled by claimant's assignment. Our claim for one (1) days pay was **DENIED.** The Board ruled in part pertinent:

RULE 1 - cont.

SBA 910 - Award No. 739 - cont.

"On this date, Claimant was assigned to a Traveling Road Switcher. He and his crew could have been required to switch these cars, even though they might not have left the location. The cars were not a part of any other crew's assignment at that point. As Claimant could have handled these cars within the scope of his assignment, we find that the work performed was not violative of the Agreement.

"Award: Claim denied."

NOTE: Article IX, Section 2 of the June 28, 1985 Conrail/UTU Agreement was involved.
12/20/96 crbdawds

CRT-11207 - **Sustained** -
Statement of Facts: Claimants performed service on behalf of another carrier, (Allegheny Valley Railroad) for which they claimed additional time i.e., time consumed for service performed on a foreign carrier from 3:15 a.m. to 7:00 a.m.

Employees' Position: Apparently, Conrail contracted the services of our members to another carrier without our consent. This was the very issue that was at the heart of our case against Conrail in System Docket CRT-9158, Award No. 637, of Special Board of Adjustment No. 910. The same position we took in CRT-9158, applies in this case except that the appropriate penalty should have been one (1) day's pay.
12/20/96 crbdawds

PLB-5441 – Award No. 56 – Operating a Company owned vehicle. **DENIED**
Filed in Rule 1 Conrail
5/4/00

RULE 4 - BASIC DAY AND OVERTIME IN ROAD FREIGHT SERVICE

CRT-8579 - Road Relief crew used exclusively in yard limits paid the yard rate of pay.

CRT-7532 - Two assignments - one tour of duty.

"On the date of the claim, January 5, 1991, the Claimants were the train crew called to report at 6:00 AM at Conway, PA and operated Train XSF-1 in through freight service to Enola, PA. Upon reporting for duty, the Claimants took charge of their power at the engine house and proceeded to No. 5 Yard, Track No. 904, where they coupled to their train. Subsequent to completing the road air brake test on their assigned train, XSF-1,

RULE 4 - cont.

CRT-7532 – cont.

they were instructed that their assignment was being changed to Train TV-12. They boarded Train TV-12 at East Conway and departed on their road trip." NOTE: Also See CRT-8760. Claim **SUSTAINED** for one day's pay for initial assignment XSF-1. Second assignment (TV-12 paid for separately.

PLB 1457 - Award No. 50 - Crew worked east out of initial terminal then west back to and through the initial terminal to their final terminal. Claimed 2 days. **SUSTAINED**.

CRT-8922 - straight-away through freight assignment cut-off en route, and deadheaded to their initial terminal. Paid service ticket to point where they were cut-off, and separate day deadhead on the basis they were cut-off en route, and returned to the initial terminal. In other words, cut-off and turning back to the initial terminal starts a new day.

CRT-8832 - Straight-away assignment used in turn service beyond their final terminal paid a new day.

SBA-910 - Award No. 653 - Claim of T. A. Obleman for earnings of B. D. Quarantello (assignment WOR203) on October 29, 1991.

Opinion of the Board:

On a day previous to the claim date, Claimant was determined to be unavailable for testing pursuant to Section VII paragraph B of carrier's Federal Railroad Administration (FRA) approved Random Drug Testing Plan. Pursuant to the Plan, his name was placed in a residual testing pool and he became subject to drug testing within the following 90 day period.

Claimant was notified to report for drug testing at 9:00 am on October 29, 1991. On that day he was assigned to the Clearfield, PA Trainmen's Extra List. He marked off the extra list with permission at 2:46 am and marked back up on the extra list at 10:45 am on the same date after providing a urine sample. Claimant was subsequently called from the extra list at 11:45 pm on that same date to report at Clearfield, PA as the Brakemen on through freight assignment COA-2X. Claimant was allowed one hour and 45 minutes pay at the through freight Brakeman's rate of pay from the time of his appointment for drug testing, 9:00 am, to the time he marked back up on the extra list, 10:45 am, pursuant to the provisions of Rule 95(c). On October 30, 1991, Claimant submitted a penalty time slip requesting payment of the earnings of Trainman B.D. Quarantello who was called from the Altoona Trainmen's Extra List for Work Train WOR-203 at 9:10 am on October 29, 1991.

RULE 4 - cont.

SBA-910 - Award No. 653 – cont.

The Board recognizes that the Organization has cited precedent standing for the proposition that Rule 67 is here applicable. Financial loss incurred by Claimant as a result of providing the federally mandated urine sample is, however, at most speculative. The assignment to which Claimant was eventually called on the claim date did compensate him better than the compensation earned by Quarantello on the same date. While the Board understands the ripple effect of assignments for an individual on the extra list, a rule of reason must be applied in each case of this type so as to prevent an employee from being unduly enriched. Under the totality of circumstances here present, it must be found that Claimant was adequately compensated. DENIED.

12/18/95 crbdawds

CRT-9882 - Road Service employee paid separately for service performed at the initial terminal of his assignment as follows: Allowed payment of one (1) road day at the Brakeman's rate of pay for the service performed on Train TV-14X beginning at 5:15 am and ending at 6:45 am, and payment for service on Train FRSE-7 at the Conductor's rate of payment beginning at 6:45 am.

12/18/95 crbdawds

PLB-2256 - Award No. 3 - Failure to comply with the Agreement.

12/18/95 crbdawds

PLB-299 - Award No. 1 - Performing service on a Wreck Train, yarding the Wreck Train and then proceeding on a road trip in Traveling Road Switcher service, constitutes two (2) separate tours of duty. It does not constitute two (2) different classes of Road Service.

12/18/95 crbdawds

SBA-910 - Awards 661 and 662 - Neutral DiLauro's decisions in regard to Rule 23 with our dissent which we hope will serve to neutralize these decisions.

12/18/95 crbdawds

SBA 910 - Award No. 735 - A crew ordered under Rule 11, is used in violation of Rule 11, which constituted two (2) different assignments for which Claimant was only paid the Reduced Crew and Productivity Allowance for the first assignment. The Board **SUSTAINED** our claim for the Reduced Crew Allowance and the Productivity Allowance for the second assignment.

12/20/96 crbdawds

CRT-10637 - Claimant paid a separate day for relief service after yarding his train at his away from home terminal.

12/20/96 crbdawds

RULE 4 - cont.

CRT-11054 - Statement of Facts: The Claimant worked two (2) assignments back to back, i.e.; 1) Relief for Train WISP-08 between Shire Oaks and MP-42 on-duty 8:00 a.m. and off-duty 10:25 a.m., 2) Shire Oaks to Mingo Junction and return in Turnaround Through Freight Service, Assignment WISO-01. The Carrier combined two (2) assignments into one (1) on the basis that Rule 23 is controlling.

Employees Position: Rule 4 is controlling, therefore, the Claimant is entitled to be paid separately (a new day for the second assignment) for each assignment.

Decision of the Carrier is stated in their letter dated July 8, 1996:

> "In lieu of the payment previously allowed for May 31, 1995, the Claimant will be allowed payment of one day from 8:00 a.m. until 10:25 a.m. and payment for a second day beginning at 10:25 a.m. in full and final settlement of the claim, without precedent. You later will be advised of the amount and pay period in which the payment is made."

12/20/96 crbdawds

SBA 910 - Award No. 333 - Lining switches for another road crew enroute between the initial and final terminal. **DENIED.**
12/20/96 crbdawds

SBA-910 - Award No. 719 - This decision sets the record straight in regard to the Carrier's misapplication of Rule 23. Said Rule deals with different classes of Road Service that can be worked during a tour of duty **as part of the same assignment.**

In Award Nos. 661, and 662, of this Board, the Carrier deliberately mislead the Neutral Member of the Board into believing that Rule 23 of the Conrail/UTU Agreement is unique to Conrail, which was proven to be false, as UTU showed in Labor's dissent to Awards 661 and 662. Rule 23 dates back to Board of Arbitration No. 168. On December 3, 1952, Board of Arbitration 168 answered the following questions:

> **"QUESTION NO. 1:** 'Should Any Rule Covering More Than One Class of Road Service Be Granted?'
>
> "The Board finds there is no controversy over this question. All parties to this proceeding now agree, as a matter of record, that there should be a rule."
>
> **"QUESTION NO. 2:** 'What shall be the language of the rule?'
>
> "Subject to and in keeping with the provisions of Paragraph 4 of the Arbitration Agreement of July 17, 1952, the Board finds that a new rule should be awarded as follows."

The Rule the Board awarded was Rule 23. Stated differently, the Board awarded a Rule in the matter of "More Than One Class of Road Service" which was applied Nationally and adopted by Conrail and the UTU (C&T) as Rule 23 of the Agreement dated September 1, 1981.

The decisions that evolved over the years in connection with the "More Than One Class of Road Service" rule, consistently held that the Rule only has application in instances where a different class of road service is performed in connection with the same assignment. Conrail deceived the Neutral Member of Special Board of Adjustment No. 910 in Awards 661 and 662 into discounting all the precedent that serves to support the aforesaid. Conrail did so by claiming Rule 23 was a different "More Than One Class of Road Service" rule, then that awarded by Arbitration Board No. 168.

In Awards 661 and 662, UTU used Conrail's Rule of the Month, June, 1986, as an Exhibit to verify the fact that Rule 23, and the Award of Arbitration Board No. 168 are one and the same. Said document was issued by Conrail to their Field Officers as guidance in applying Rule 23. As part of that directive, Conrail advised as follows:

> "However, before the digest is listed, it should be pointed out that the original rule written in 1952 by Board of Arbitration No. 168 is the same rule as those found in our agreements today. The only difference being the paragraph numbers and letters."

In the instant case, the UTU left nothing to chance. UTU admitted the Award of Arbitration Board No. 168 in its entirety. That lead the Neutral Member of the Board to recognized that the Claimant had not been involved in working "More Than One Class of Road Service" within the same assignment. What was involved, is an employee who was assigned to work from Conway, PA to West Brownsville, PA on Train XWB-46. Enroute, the Carrier terminated that assignment at Thomson, PA, an intermediate point between Conway, PA and West Brownsville, PA. Claimant was then used on a second assignment, Train UWT-40, Thomson, PA to Conway, PA. Inasmuch as it was shown that Rule 23 had no application, what remained was to apply Rule 4 which reads in part pertinent:

RULE 4 - Basic Day and Overtime Road Freight Service

> "(a) In road freight service, 100 miles or less, 8 hours or less (**straightaway** or turnaround) **will constitute a day's work.**

RULE 4 – cont.

SBA-910 - Award No. 719 - cont.

> **"NOTE:** The 100 mile day has been increased in Through Freight Service as set forth in the Agreement of June 28, 1985 and February 18, 1992, however, the increase in basic day miles has no bearing on the instant case."

The Carrier limits their dissent to Rule 25, as if that was the only Rule upon which the Organization had relied, which is false. We cited Rules 4, 15, 25 and 63 as controlling. Moreover, the decision made it abundantly clear that the findings in favor of the employees was based on the following:

> "The Board is not persuaded that Rule 23 contemplates this situation, and the Board concludes that Claimant is entitled to additional compensation for his service on September 19 and 20, 1993."

12/20/96 crbdawds

SBA 910 - Award 702 - Claimants paid a <u>new day</u> for working beyond their final terminal to a point where they were turned back to their final terminal on lite engines. They claimed a second new day for the lite engine service. Board ruled that they were in turnaround service and they could make the return trip with lite engines. In other words, they were only entitled to one (1) day's pay instead of the two (2) days pay that was claimed. This was in addition to their service timecard from their initial terminal to the final terminal on the assignment worked prior to working beyond their final terminal.
12/18/97 crbdawds

SBA-910 – Award No. 611 – Crew stopped enroute and returned to their initial terminal to service the engines, i.e. Engine 6788 needed water. Thereafter they departed a second time from their initial terminal with their lite engines to recouple to their train left standing in road territory where they cut-off. The crew claimed a new day when they departed their initial terminal a second time. **DENIED.**
12/18/97 crbdawds

SBA 910 – Award No. 649 – Claimants on duty 8:00 AM for a Work Train, Assignment WOR-302. Thereafter, they operated light engines to a point 22 miles from their on duty point. Upon arrival at 10:00 AM, Claimants were informed that they would thereafter be used in relief service on Traveling Road Switcher WAFR-90. Claimants performed service as directed and completed their tour of duty at 7:15 PM.

Each Claimant submitted two separate time slips. The first time slip covered their service beginning at 8:00 AM and ending at 10:00 AM. The second time slip claimed a separate day's pay beginning at 10:00 AM and ending at 7:15 PM. **SUSTAINED.**
12/18/97 crbdawds

RULE 4 - cont.

CRT-11594 and CRT-11595 – Claimant was in Pool service between Renovo and the Harrisburg Consolidated Terminal. Claimant made a turnaround trip between Renovo and Driftwood, prior to departing Renovo and working to the HCT on Train BUHB-8. Train BUHB-8 outlawed at Driftwood. Instead of using employees on the extra list at Renovo to relieve BUHB-8 at Driftwood and bring the train to Renovo, the Carrier used the pool crew that worked BUHB-8 between Renovo and the HCT. Claimant filed for one (1) day's pay under Rule 4 for the service between Renovo and Driftwood on the basis that said service involved working a separate assignment which should have flowed to the extra list. **SUSTAINED**.
12/18/97 crbdawds

SBA 910 - Award No. 639 - See award for the following:

> "Claimants were working Traveling Road Switcher assignment WNFR-22 on July 21, 1988. Claimants were required to perform relief service outside their advertised working limits during their tour of duty that day. They operated Train TV-14 from Framingham, Massachusetts to Beacon Park at Boston, Massachusetts. They were then transported back to Framingham, Massachusetts where they resumed their normal WNFR-22 duties. Claimants submitted penalty timeslips for one day's pay for an alleged violation of Rule 8. The Carrier allowed them 1 hour and 40 minutes in addition to their service trip under Rule 8(c).....
>
> "The Board finds SBA 910 Award #423 to have dealt with the Organization's contention that, under Rule 15, extra work -- in that particular case relief service work -- belongs to employees on the extra list. The Carrier maintained that Rule 15 did not preclude it from using the crew of a traveling road switcher to recrew an outlawed road train and that Rule 23 (a) contemplates that road trainmen may be required to perform two or more classes of road service in a day or trip. The Board agreed with the Carrier's position. In the present case, the Board is not persuaded that the Carrier's assignment of Claimants to perform relief service outside their advertised working limits on July 21, 1988, or its compensation of them for that day, violated Rules 15, 8, 9 or 46 as contended in the Joint Submission. In fact, this use and compensation of the crew seems to have been consistent with Rules 23(a) and 8(c).....
>
> "Award The claim is **DENIED."**

12/22/98 crbdawds

CRT-11356 - Road crew moved a train, other than the train to which they were assigned, from one point to another point within their initial terminal. Thereafter, the crew took charge of their assigned train and departed the initial terminal. **SUSTAINED** for one (1) yard day for performing yard service at the initial terminal, i.e. moving a train at the initial terminal, other that the train worked in road service, is yard service.
12/22/98 crbdawds

RULE 4 - cont.

SBA 910 – Award No. 906 – Road Crew stopped enroute to work a train destined for the terminal from which they departed. After working back into their initial terminal, they were deadheaded back to the point where they left the train to which assigned, and they completed the trip to their final terminal. Their claim for a separate day for the service back into their initial terminal was **DENIED.** See Labor's dissent.
5/4/00

RULE 7 - PERFORMANCE OF SERVICE BY ROAD FREIGHT TRAINMEN

CRT-7796 - **SUSTAINED** for one day for a work train crew switching out cars for their own train at a location where yard crews were on duty.

SBA 910 - Award No. 500 - Engines Wyed at final terminal. **DENIED**.

SBA 910 - Award No. 487 - Claimants yarded their train at the final terminal and then set their engine over to an adjacent track. **DENIED**.

SBA 910 - Award No. 425 - Involves a claim for picking up off more then minimum number of tracks - Carrier designated Track 8 which would not hold the train. Overflow to Track 2 which would have held the train. UTU asserted Track 2 would have held the train, therefore, the crew picked up off more then the minimum number of tracks. **DENIED**.

SBA 910 - Awards No. 346 and 381 - Claim for 8 hours (Award 346) and 40 minutes (Award 381) for operating a panafax machine. **DENIED**.

SBA 910 - Award No. 365 - **SUSTAINED** for one days' pay - Involves a road crew moving engines from one track to another in order to uncover their power.
PLB 2570 - Award No. 121 - Road crew spotted cabin for water at initial terminal. **SUSTAINED**.

SBA 910 - Award No. 70 - Brakeman on a lite engine assignment picked up engines off more then the minimum number of tracks. **DENIED**.

SBA 910 - Award No. 432 - Ran around a pickup at the initial terminal. Claimed irregular service. - **SUSTAINED**.

SBA 910 - Award No. 405 - Track capacity **DENIED**.

SBA 910 - Award No. 322 - Although this claim was **DENIED** the award contains useful information regarding what constitutes another location when setting off and picking up cars.

RULE 7 - cont.

SBA 910 - Award No. 328 - Road crew cuts helper engineer off and places the engine on the Pit. (**SUSTAINED**).

SBA 910 - Award No. 166 - Yarding train and placing engines on other then a ready track (**Dismissed**) No showing of prior restrictions.

SBA 910 - Award No. 498 - A road crew takes charge of their power, Coupled to their train which had engines head out and moved the train from one point to another in the initial terminal. Claimants then set-off the engines that were head out in the train when they coupled. Claim for 8 hours irregular service at the initial terminal was **DENIED**.

CRT-8351 - Claim **SUSTAINED** for one day's pay for delivering train beyond final terminal.

CRT-8707 - On October 15, 1991, the Claimants were assigned in work train service on Train WOR-202 on duty at the Harrisburg Consolidated Terminal at 5:00 AM. At 12:35 PM, while working at Wall in Lebanon, PA, the Claimants were instructed by Harrisburg East Dispatcher Liesey to relieve the crew on Train XAN-15 on No. 2 Main at Wall, set the train to No. 4 Storage Track at the Water Plug and take the locomotive consist to the Cornwall Industrial Track. The work was completed at 12:45 PM. Claimants were **allowed** payment of a penalty yard day for the service performed on October 15, 1991. Service was performed within switching limits where yard crews were on duty, i.e., Harrisburg Consolidated Terminal.

See SBA 910 - Case No. 605 - CRT-6748 - Shoving cars blocking the route of Claimant's assignment. **DENIED**.

CRT-8912 - Set-off initial terminal. **SUSTAINED.**

SBA 910 - Award No. 588 - Cutting away/making a pick-up/doubling back to the train and then doubling the train to another track and departing constitutes two (2) pick-ups or moves.

CRT-8832 - Straight-away assignment used in turn service beyond their final terminal paid a new day.

PLB-4982 - Award No. 13 - In **SUSTAINING** a claim for a road crew on the basis the road crew performed switching service reserved for yard crews, Referee J. Mikrut, Jr. ruled as follows: "While Carrier's argument that the parties' Agreement fails to prohibit such assignments is correct in general terms, said Agreement, nonetheless, does not specifically authorize such action; and more significantly, such an interpretation ignores

PLB 4982 – Award No. 13 – cont.

the long-standing, well established rule in the railroad industry which directs that road service is road service, and yard service is yard service -- and, absent any specific agreements by the parties to the contrary, neither crew shall perform the work of the other."
12/18/95 crbdawds

PLB-4656 - Award No. 8 - **SUSTAINS** a claim for a road crew required to switch-out an excessive dimension car to the head end of their train while enroute. The Referee based his decision on the fact that the service could have been performed at the initial terminal by a yard crew.
12/18/95 crbdawds

CRT-10306 - Claimant made up his train at the initial terminal as follows - set two (2) cars that stood 16th and 17th deep on track "Red" to track "White" - doubled back to track "Red" - then to track "White" and finally back to "Red". **SUSTAINED** for one (1) yard day. NOTE: Claim date subsequent to the Agreement of February 18, 1992. **Also see CRT-11416.**
12/18/95 crbdawds

SBA-910 - Award No. 643 - Claim **SUSTAINED** for one (1) day's pay for picking up car(s) behind other car(s) standing head out on the track.
12/18/95 crbdawds

See PLB-5155, Award No. 1 for an explanation of the term "our train" which reads in part here pertinent as follows:

> "The Board finds that the Carrier cannot convert a bulletined and advertised road assignment into a 'roustabout assignment'. The 1985 Contract use of the term 'own train' is based on an understood and accepted articulated road assignment in connection with the road crew's own train and it cannot be transmuted into any assignment that the Carrier wants performed in the terminal after the road crew arrives therein with its road train.
>
> "The Board finds, in view of the history of the Road Yard work dispute that the parties negotiated the 1985 National Agreement whereby the Organization agreed that the scope and extent of yard work that a road crew could perform in a terminal could be appreciably broadened, but the Organization limited this extended scope of work to the road crew's own train, and it was not a plenary and unlimited grant of authority to the Carrier to use road crews to perform yard service at will in the terminal. A reading of Article VIII and the official Agreed-Upon-Interpretations of the Article reveal that these Interpretations placed a limited rather than a broad scope to its meaning and purpose."

12/18/95 crbdawds

RULE 7 - cont.

SBA-910 - Award No. 652 - Claim **SUSTAINED** for a yard day for a road crew required to runaround a draft of cars previously set off and move the cars to another location in the final terminal.
12/18/95 crbdawds

See CRT-9941 - for the following:

> "Claim of road conductor for payment of a penalty day June 7, 1993 for being required to perform irregular service at the initial terminal. In run-through service Columbus to Cincinnati, Ohio assigned to Train COCS-8X and reported for duty 5:30 am, June 7, 1993 at Buckeye Yard, Columbus, Ohio. At the diesel pad facility at Buckeye Yard, per instructions of the yardmaster on duty at North Tower, was required to couple into engines CR 5528 and CR 5504 (the power for train COCI-7A), take them to the Departure Yard and couple them to the cars of train of COCI-7A in track No. 3. This service performed 6:04 am to 6:46 am June 7, 1993. These engines were not a part of the road crew's locomotive consist and were not used in connection with train COCS-8X.
>
> "In lieu of the compensation previously allowed for June 7, 1993, the Claimant will be allowed payment of one yard day from 5:30 am to 6:46 am and payment for the road trip from 6:46 am until the time he marked off duty on Train COCS-8X."

12/18/95 crbdawds

CRT-9901 - Handled power for another assignment at the initial terminal of their assignment. **SUSTAINED** for one (1) day.
12/18/95 crbdawds

CRT-9900 - Inspect hand brakes on other than their own train while in road service. **SUSTAINED** for one (1) day's pay.
12/18/95 crbdawds

CRT-9899 - After yarding train with power left attached - moved engines standing on yard track to the Pit. **SUSTAINED** for one (1) day.
12/18/95 crbdawds

PLB-1324 - Award No. 3 - A road train shoving another road train within switching limits where yard crews are on duty is a violation, i.e., it is service that should have accrued to a yard crew.
12/18/95 crbdawds

CRT-10613 (Pickell) - Set off initial terminal. **SUSTAINED** - Subsequent to 2/18/92 Agreement.
12/20/96 crbdawds

CRT-10637 - Claimant paid a separate day for relief service after yarding his train at his away from home terminal. 12/20/96 crbdawds

RULE 7 - cont.

CRT-10709 for the following:

> "Claim of Road Conductor for payment of a penalty day October 11, 1994, in connection with:
>
> 'Allow a penalty day October 11, 1994 for being required to perform irregular service at the final terminal. In through freight service Cincinnati to Columbus, Ohio assigned to train CICO-1B and reported for duty 6:00 p.m. 10/11/94 at Sharon Yard (Cincinnati Terminal). After yarding the train in the receiving yard at Buckeye Yard, Columbus, Ohio (final terminal), was required to take the locomotive consist (CR 6457 and CR 6773) from Buckeye Yard to Mile Post 143.0 of the Cincinnati Line (east of Buckeye Yard) and couple it to the train of yard crew YSCO-92. This service was performed 11:30 p.m. 10/11/94 to 12:45 a.m. 10/12/94 per instructions of the Trainmaster on duty at Buckeye Yard.'
>
> "In lieu of the compensation previously allowed for October 11, 1994, the Claimant will be allowed payment for the road trip from 6:00 p.m. until 11:30 p.m. on Train CICO-1B and payment of one yard day from 11:30 p.m. until 1:05 a.m."

12/20/96 crbdawds

CRT-10705 - Set off initial terminal. **SUSTAINED** for 8 hours irregular service initial terminal. Pickell case.
12/20/96 crbdawds

SBA 910 - Award No. 734 - Switching out a car or setting out a car in connection with your own train at the initial terminal is considered a move counting towards the three (3) moves that can be required, in addition to picking with the train.
12/20/96 crbdawds

CRT-11318 – Road crew spots and pulls cars at an industry at an intermediate point enroute where a yard crew was on duty. Position taken locally by the Manager-Labor Relations was to the effect that such service constitutes permissible moves towards those allowed pursuant to Article VII of the February 18, 1992 Agreement. Senior Director Labor Relations allowed the eight (8) hours claimed for performing yard service.
12/18/97 crbdawds

SBA-910 – Award No. 746
Facts: Our crew was instructed by the North Tower trainmaster on duty to take our engines, once we cut away from our train in the receiving yard, and go to the Miami inbound track at Fisher Road, and take charge of two lite engines (CR-3202 and CR-6723). We took these additional two engines with ours to Buckeye engine pad. The Carrier contends that the pick up and transport of the two locomotives was permissible without penalty under Rule 7, as amended by Article VI, and Article V, Section 3(d)(iii) of the June 28, 1985 Agreement. Those provisions read in pertinent part as follows:

RULE 7 - cont.

SBA-910 – Award No. 746 – cont.

Article V – BASIS OF PAY

***

Section 3 – All Employees

***

(d) Engine Exchange (Including Adding and Subtracting of Units) and Other Related Arbitraries.

***

Effective July 1, 1987, all arbitrary allowances provided to employees for performing work described in Paragraph (I) above are eliminated.

ARTICLE VI – ROAD-YARD MOVEMENT

Section 1 – Rule 7 of the UTU (C&T) Single Agreement effective September 1, 1981, and Article F-s-1 of the UTU Single Agreement effective September 1, 1981, are amended and restated to read as follows:

(a) Road freight crews may be required at any point where yard crews are employed to do any of the following as part of the road trip, paid for as such without any additional compensation and without penalty payments to yard crews, hostlers, etc.:

* * *

(5) Handle engines to and from train to ready track and engine house, including all units coupled to the operating unit (units).

* * *

(7) Exchange engine of their own train.

Findings: It is apparent to this Board from a review of the entire record that Rule 31 does not grant to yard crews an exclusive right to perform all movement of cars and trains within the switching limits. Clearly, certain specified work has been carved out by agreement and properly may be performed by road crews under Article VI and Article VII. The work here was the pick up of two locomotives by the road crew and the delivery of those locomotives, along with the original consist, to the engine house. This work cannot be regarded as falling within paragraph (5) of Article VI which pertains to the handling of "engines to and from train to ready track and engine house, including all units coupled to the operating unit (units)" because that provision pertains to work done "as part of the road trip". The qualifying phrase "as part of the road trip" cannot mean "during the road trip", a much broader concept and the one sought here by the Carrier. That interpretation would permit road crews to do any and all switching work they might

encounter so long as the train had not yet completed its trip, a result the parties did not intend. The steady easing of restrictions over the years implies that the road crews did not have carte blanche to perform any and all switching in 1985 when Article VI was amended. That being the case, the agreed-to exceptions must be strictly applied.

The facts here cannot be molded into a form which makes it appear that the movement of two "strange" locomotives to the engine house was "part of [Claimant's] road trip". There was no connection at all except for the fact that Claimant's train was available to perform the work. Moreover, there was no "exchange" of units as that term is commonly understood so paragraph (7) does not apply either.

While Article VII, Section 1 (a) does permit a road crew, in connection with its own train, to make one move "in addition to those permitted by previous agreements", the addition of two locomotives to the consist here was not in connection with its own train so the exception does not apply.

Because the disputed work does not fall within any of the agreed-to exceptions, the claim must be sustained.

AWARD: The claim is **SUSTAINED** only to the extent that Claimant shall be allowed one basic yard days' pay. No further remedy is warranted.
12/18/97 crbdawds

CRT-11511 – Claimant was in road service at the final terminal and he was required to pick-up an engine on the way to the pit with his power and place both his power and the power picked-up on the pit. A claim for one (1) days pay for a violation of Rule 7 was **SUSTAINED.**
12/18/97 crbdawds

CRT-11550 – Weighing cars at the final terminal when a yard crew was on duty. **SUSTAINED.**
12/18/97 crbdawds

CRT-11310 – Claimant was assigned as Conductor on assignment STA-43J. After reporting for duty, Claimant was instructed to move locomotive Nos. CR 1649, 1650, 5533 and 6796 from No. 2 Cab Track to the engine house. Claimant then was ordered to take locomotive Nos. CR 3340, 3398 and 6050 from the engine house to No. 17 Track at 4 Hump. Upon completion of this move, Claimant was returned to short turnaround service wherein he operated Train Mail-3 from Island Avenue to Conway and Train BAPI-4 from CP Bell to Conway.

RULE 7 - cont.

CRT-11310 – cont.

In lieu of payment previously allowed, Claimant was allowed payment of one day at the yard rate of pay for service performed at Conway Yard from 7:00 pm to 8:45 pm and a new day for short turnaround service performed from 8:45 pm to 7:00 am.
12/18/97 crbdawds

SBA 910 – Award No. 747 – Road crew at the initial terminal is required to move cars that are blocking their route. The claim for performing irregular service at the initial terminal was **DENIED** on the basis that "the 1992 amendments to Rule 7 are sufficiently general in nature as to encompass the work in dispute, work that was clearly necessary to permit Claimant's train to proceed on its assigned track. As this Board held in Case No. 605, the movement of cars blocking a track intended to be used by Claimant's train 'was clearly incidental to and accomplished in order to complete [his] assignment.' While there could be a question as to the permissible number of moves in addition to those permitted by previous agreements, that issue has not been raised by either party and will not be addressed here."
12/18/97 crbdawds

CRT-11233 – Claims filed by a Road Conductor for payment of a penalty day account of being required to perform irregular service at the initial terminal where yard crews are employed. Upon reporting for duty, the train dispatcher instructed Claimant to relieve and take charge and yard train SRCO-4. Train SRCO-4 stopped at Trabue Road in Buckeye Yard. Claimant took charge of said train and moved it one train length into the receiving yard. This was yard service performed within the switching limits of the Columbus, OH consolidated terminal. **SUSTAINED**. Claimant allowed payment of one yard day in full and final settlement. Also see CRT-11510, CRT-11200, CRT-11328, CRT-11326, CRT-10694, CRT-11483, CRT-10719, CRT-10835, CRT-11445, CRT-10415, CRT-10880, CRT-11443 & CRT-11390.
12/18/97 crbdawds

SBA 910 – Award 781 – Placing a train on a track within the final terminal for the purpose of running around the train so that it can be interchanged (Rule 68[b]) does not constitute a violation of Rule 7.
12/18/97 crbdawds

The following off-property decisions were all **SUSTAINED** and they all involve an interpretation of the Road/Yard relief granted by PEB 219 which on Conrail is Article VII Section 1 of the February 18, 1992 Agreement, reading in part pertinent:

> ARTICLE VII – ROAD/YARD WORK
>
> Section 1. Rules 7, 24 and 68 of the Collective Bargaining Agreement, as previously amended, are further amended to permit road crews to perform the following work without penalties to road or yard crews:

RULE 7 – cont.

Article VII – Road/Yard Work – cont.

(a) Pursuant to the new road/yard provisions contained in the recommendations of Presidential Emergency Board No. 219, as clarified, a road crew may perform in connection with its own train without additional compensation one move in addition to those permitted by previous agreements at each of the (a) initial terminal, (b) intermediate points, and (c) final terminal. Each of the moves — those previously allowed plus the new ones – may be any one of those prescribed by the Presidential Emergency Board: pick-ups, set-outs, getting or leaving the train on multiple tracks, interchanging with foreign railroads, transferring cars within a switching limit, and spotting and pulling cars at industries.

1) Public Law Board 4975 – Award No. 81 – Referee: Robert O. Harris - Crew yarded another road train that was within the switching limits of the terminal before departing on their road trip on a different train. Claim **SUSTAINED** for eight (8) hours. This decision is particularly important because the Referee was also the Chairman of PEB 219 and he ruled in Award No. 81 of PLB 4975 as follows:

"The Chairman of this Board was also the Chairman of PEB 219. Nothing in the record of PEB 219 supports the carrier argument that the recommendations of that PEB gave the carriers the right to combine road and yard work except where the work was performed in connection with the regular road assignment of the crew.

The carrier has cited several cases which might be interpreted as reaching a different result. To the extent such cases found that work need not be in connection with the road crew's own assignment, such decisions are not consistent with the intent of PEB 219.

Award: The claim is sustained."

(Also see First Division Award No. 24828 in Rule 7 Conrail)

Following the decision in Award No. 81 of Public Law Board No. 4975, we used that decision to collect payment in the following System Dockets which had previously been denied and were awaiting adjudication by Special Board of Adjustment No. 910:

CRT-11483	Claimant	D. A. Burkholder
CRT-10880	Claimant	R. D. Harpster etal
CRT-11443	Claimant	Various
CRT-10835	Claimant	D. A. Burkholder etal

RULE 7 – cont.

PLB 4975 – Award No. 81 – cont.

CRT-11390	Claimant	E. A. McCaulley
CRT-10694	Claimant	P. M. Hayes
CRT-11328	Claimant	Various
CRT-11326	Claimant	R. D. Harpster
CRT-11200	Claimant	P. M. Hayes etal

12/22/98 crbdawds

2) Public Law Board 5907 – Award No. 5 – Referee: R. G. Richter - Claimants' road train was on track 3 Seagirt Yard Baltimore. Before departing the terminal they were used to move six (6) cars from Track 6 Penn Mary Yard to Track 1 at Seagirt Yard. Claimant then took charge of their road train on track 3 Seagirt Yard and departed the terminal. Claim SUSTAINED for eight (8) hours.

3) Public Law Board 5907 – Award No. 6 – Referee: R. G. Richter - Crew yarded another road train that was within the switching limits of the terminal before departing on their road trip on a different train. Claim **SUSTAINED** for eight (8) hours.

4) Public Law Board 5907 – Award No. 4 – Referee: R. G. Richter - After yarding their train at the final terminal, on the way to the Pit with their engines, Claimants were required to pick-up other engines standing on a yard track within the final terminal and they placed all the engines on the Pit. Claim **SUSTAINED** for eight (8) hours.

5) Public Law Board 5907 – Award No. 3 – Referee: R. G. Richter - Claimants at their turnaround point were used to move an engine (other than the engine assigned to their train) and eight cars from one location to another within the terminal. Claim **SUSTAINED** for eight (8) hours.

12/18/97 crbdawds

CRT-11221 – More than the minimum number of tracks were used at other than where the road crew received its trains at the initial terminal. See Q and A No. 7 of the Illustrative Road/Yard Questions and Answers from the February 18, 1992 Agreement for the following:

Q7: Can a road crew (other than an over-the-road solid run through train) when making an interchange delivery or setting out at other than its final yard use multiple tracks to effectuate the move?

A: No. The application of the multiple track move is limited to where the road crew receives its train at the initial terminal and yards its train at the final terminal. (Emphasis added)

RULE 7 – cont.

CRT-11221 – cont.

Claim **SUSTAINED** for eight (8) hours. Also see CRT-11098, CRT-11220, CRT-10857, CRT-11338, and CRT-11335.
12/18/97 crbdawds

CRT-11356 - Road crew moved a train, other than the train to which they were assigned, from one point to another point within their initial terminal. Thereafter, the crew took charge of their assigned train and departed the initial terminal. **SUSTAINED** for one (1) yard day for performing yard service at the initial terminal, i.e. moving a train at the initial terminal, other that the train worked in road service, is yard service.
12/22/98 crbdawds

SBA 910 – Award No. 199 – Pulling cars forward, behind cars being picked up, and the cutting off of the cars, does not constitute a violation of Rule 7.
12/22/98 crbdawds

CRT-12033 – **SUSTAINED**
STATEMENT OF FACTS:

Claimant made-up his own train at the initial terminal while yard crews were on duty as follows:

1) Picked-up cars off Track No. 1
2) Picked-up cars off Track No. 3
3) Picked-up cars off Track No. 1
4) Picked-up cars off Track No. 3
5) Picked-up cars off Track No. 1
6) Picked-up cars off Track No. 3

EMPLOYEES' POSITION:

The making up of a road train is service reserved for yard service employees. Obviously, Tracks 1 and 3 held the cars that made-up the Claimant's train, but they were blocked incorrectly, which meant a switching operation was necessary. Consequently, the back and forth moves between the two (2) tracks. Had the yard crew blocked the train correctly, the road crew would have simply doubled one track to another and departed.

Claimant was used in yard service, therefore, he is entitled to be paid the penalty claim as presented. See CRT-10306 and CRT-11416.
12/22/98 crbdawds

SBA 910 – Award No. 838 – Prior to taking charge of the engines used to depart the terminal, a road crew used different engines to move one (1) car from one point to another point in the initial terminal. The different engines were then placed on a

SBA 910 – Award No. 838 – cont.

classification track. Claimant then took charge of the engines for his train, made a pick-up of the one (1) car, doubled to the rest of his train, and departed the terminal. The Board **SUSTAINED** the claim for one (1) day's pay on the basis that the movement of the engines from the Pit to the Classification Yard did not constitute service in connection with claimants own train.
12/22/98 crbdawds

CRT-11802 – Road crew arriving Final Terminal, where yard crews were on duty, performed service as follows:

1) Claimant split his train into two (2) sections for the purpose of making-up the front section of his inbound train, as an outbound train for another assignment.

2) This required the claimant to handle a rear end marker and place the device on the rear of the last car of the outbound train.

3) Claimant was also required to test the device and test the air brakes on the outbound train.

This case was scheduled to be heard by SBA 910 on May 13, 1998. By letter dated 5/7/98, the Carrier advised that this case was being paid without precedent.
12/22/98 crbdawds

SBA 910 – Award No. 829 – Making room for a set-off, by first moving cars on the track where the set-off was made, was taken to be an act the claimants elected to do on their own, therefore, the Carrier was found not liable for a penalty. The Board concluded that the crew could have simply coupled to the cars and shoved back to clear.
12/22/98 crbdawds

CRT-11750 – Road crew yarded its train at the final terminal and then they were used to yard another road crews' train. For yarding the train of another road crew, they were paid a yard day.
12/22/98 crbdawds

CRT-11317 – Road crew yarded their train at the final terminal and they placed their engines on the Pit. Thereafter they were taxied to another location in the final terminal where they took charge of the power of another road crew and they placed the power on the Pit. They were paid a yard day for taking charge of the power of another crew and placing it on the Pit.
12/22/98 crbdawds

SBA 910 – Award No. 797 – Road crew yarded its train and then delivered the locomotive consist to a foreign Carrier's yard. **DENIED.**
12/22/98 crbdawds

RULE 7 - cont.

SBA-910 – Award No. 720 – This decision flies in the face of the "Harris Award" i.e. PLB-4975 – Award No. 81. The issue in dispute involved the movement of a train within the initial terminal, afterwhich claimant took charge of a different train within the initial terminal that was worked from the initial terminal to the final terminal. The service performed in connection with the first train was considered yard service and claimant was paid a yard day under the Harris Award. This award **DENIED** THE SAME CLAIM. Inasmuch as Robert Harris wrote the Rule that is involved (Article VII, Section 1 of the February 18, 1992 Agreement was taken from PEB 219) the Harris decision supersedes this decision, and in fact Conrail has already recognized as much, i.e. the instant case involved System Docket CRT-10207. Subsequent to the Harris Award, Conrail made payment in the following System Dockets which involved the same set of circumstances as in CRT-10207:

1) CRT-11483
2) CRT-10880
3) CRT-11443
4) CRT-10835
5) CRT-11390
6) CRT-10694
7) CRT-11328
8) CRT-11326
9) CRT-11200

In accordance with the above, even Conrail must recognize that the findings in Award No. 720 must be ignored in favor of Award No. 81 of PLB 4975.
12/22/98crbdawds

SBA 910 – Award No. 881 – This decision **SUSTAINS** all the claims that pre-date February 18, 1992. Thereafter, and henceforth, the award treats a runaround move as a set-out and pick-up, i.e., two (2) moves towards the maximum of three (3) additional moves that can be made at the initial or final terminal in addition to the initial pick-up of the train at the initial terminal and finally yarding the train at the final terminal.
12/22/98 crbdawds

SBA 910 – Award No. 856 – **SUSTAINED.** The claim date was February 21, 1988. The claim involved setting off on more than the minimum number of tracks. This claim pre-dates Article VII, Section 1 of the Agreement of February 18, 1992, which allows for "getting or leaving the train on multiple tracks". However take note of Question and Answer No. 7 which reads: Question Can a road crew (other than an over-the-road solid run through train) when making an interchange delivering or setting out at other than its final yard use multiple tracks to effectuate the move? Answer No. The application of the multiple track moves is limited to when the road crew receives its train at the initial terminal and yards its train at the final terminal.
March 99

SBA 910 – Award No. 857 – **DENIED**. The claim date was August 8, 1988. The claim involved setting off on more than the minimum number of tracks.
March 99

RULE 7 - cont.

PLB 5441 – Award No. 69 – Performing yard service while no yard crew is on duty. **DENIED.** Filed in Rule 7 Conrail.
5/4/00

PLB 5441 – Award No. 77 – Set-off into an industry. **DENIED.** Filed in Rule 7 Conrail.
5/4/00

SBA 910 – Award No. 868
This decision erroneously concludes that reading the Questions and Answers that accompany PEB 219 in the aggregate, makes the answer to Question No. 7 "Yes", when in fact, it is "No". Simply put, the decision changes the parties' agreement, and as such, this Board has exceeded its authority. Therefore, the decision must be treated as having no force or affect.

The decision goes on to refer to a Carrier argument regarding three (3) incidents when the claimant set-out cars to track #2 at the eastbound receiving location, as concerns the number of moves that occurred. The Carrier contends this constituted a continuation of the same move and the Board concluded that "The Organization has not shown on this record that the Carrier's interpretation is incorrect." The Board's conclusion in this regard is somewhat correct. However, this is so because the disputed work in question before the Board, as viewed by the Organization, was a multiple track move within the final terminal in violation of Question and Answer No. 7, i.e., a multiple track move was prohibited because it took place at a location other than where the claimant yarded his train within the final terminal.

Uncoupling cars from a train and setting them off in the yard, returning to the train and uncoupling a second draft of cars and setting them off in the yard, returning to the train and uncoupling a third draft of cars and setting them off in the yard, constitutes three (3) different moves. This can be confirmed by referring to Award No. 588 of this Board, reading in part pertinent:

Special Board of Adjustment No. 910
Award No. 588
Referee: William F. Euker

> "The facts presented to us do not show that Claimants merely picked up 35 cars from one track then picked up 58 from another track before doubling to their train. They picked up 35 cars for Enola from 2 Park Track and then coupled to their train. They then doubled their train to 58 cars located on 6 Park track destined for Pot yard and left. Making two pick-ups at an intermediate point was not sanctioned by the rules.

RULE 7 - cont.

SBA 910 – Award No. 868 – cont.

> "In their presentation to this Board, the Organization conceded had the move itself simply required Claimants to uncouple from their inbound train then double Track 2 Park to Track 6 Park and recouple to their train, then it would have constituted one straight pick-up from the minimum number of tracks as neither track would have held the entire ninety-three (93) cars, so the move in that event would have been permissible.
>
> "We are inclined to agree with the Organization's position in this case based on the particular facts we have outlined above.
>
> "FINDINGS: The Agreement was violated.
>
> "AWARD: Claim sustained."

As clearly denoted by Award No. 588, without dissent by the Carrier, one (1) move ends and another begins each time the engine recouples to the train.

The decision in the instant case goes on to count the next two (2) moves as moves two (2) and three (3), when in fact they were moves four (4) and five (5). This constituted a second violation of Rule 7 (only three (3) moves are permitted in addition to yarding the train). However, the latter violation was not pursued inasmuch as the violation concerning Q&A #7 required the payment of a yard day for performing yard service and the additional yard service performed (more than three (3) moves) would not constitute a happenstance that required the payment of a second yard day, i.e., one (1) yard day would cover both occurrences.
5/4/00

RULE 8 - TRAVELING ROAD SWITCHER SERVICE

CRT-10998 - Claimants operated between the MON Line at Peters Creek and the W&LE Interchange which is a branch line that begins at Peters Creek and runs approximately one mile to the track where the cars to be pulled-up were located. SUSTAINED under Rule 8(c) for one (1) hour and 10 minutes.
12/20/96 crbdawds

CRT-10872 - Traveling Road Switcher crew paid one (1) hour and 50 minutes beyond advertised limits under Rule 8(c).
12/20/96 crbdawds

RULE 8 – cont.

SBA-910 – Award No. 777 – Claimants were the incumbents on a pool assignment that protected service between Shire Oaks/Conway, Shire Oaks/Conemaugh and Shire Oaks/Southern Limits of West Brownsville. They were used partly between advertised limits but mostly beyond the working limits of their pool. They filed for time consumed beyond the limits of the pool under Rule 8(c). Carrier argued Claimants' status was that of an extra crew and that they became an extra crew because the Carrier had removed them from their assignment under Rule 67. The Board ruled on the matter in part here pertinent:

> "Rules 8(c) and 67 both provide a method for computing compensation under certain circumstances. If Claimants were in pool service and required to operate beyond the advertised limits of their pool assignment, Rule 8(c) would dictate how they would be paid. If, on the other hand, Claimants were taken from the pool and placed in other service, Rule 67 would govern their compensation. We do not read Rule 67 as giving Carrier the right to move employees from their assignments to perform other work. Rather, it merely sets the employees' compensation when Carrier exercises its right to move them. That right must be found elsewhere in the Agreement.
>
> Carrier has cited no Rule of the Agreement, other than Rule 67, that would give it the right to take Claimants out of pool service and put them on the job they worked. There are provisions for covering such work from the extra board, and there are provisions setting forth how vacancies are to be filled when the extra board is exhausted. It is evident Carrier did not comply with these provisions when it moved Claimants. Therefore, we must conclude they were not taken out of the pool. It follows, then, that Claimants must be compensated in accordance with Rule 8(c)."

12/18/97 crbdawds

Also see CRT-11478, CRT-11477, CRT-11206, and CRT-11458 – all of which are the same case and all of which were to be heard by SBA 910 on April 15, 1998. The Carrier advised by letter dated April 6, 1998 that payment "is being allowed", therefore, there was no need to argue these cases before the Board.

12/22/98 crbdawds

SBA 910 – Award No. 811 – Time payable under Rule 8(c) includes all time consumed outside the advertised territory of the assignment. It is not limited to time actually worked, as contended by the Carrier. Also see CRT-11256.

12/22/98 crbdawds

SBA 910 - Award No. 639 - See award for the following:

> "Claimants were working Traveling Road Switcher assignment WNFR-22 on July 21, 1988. Claimants were required to perform relief service outside their advertised working limits during their tour of duty that day. They operated Train TV-14 from Framingham, Massachusetts to Beacon Park at Boston,

RULE 8 – cont.

SBA 910 - Award No. 639 – cont.

> Massachusetts. They were then transported back to Framingham, Massachusetts where they resumed their normal WNFR-22 duties. Claimants submitted penalty timeslips for one day's pay for an alleged violation of Rule 8. The Carrier allowed them 1 hour and 40 minutes in addition to their service trip under Rule 8(c).....
>
> "The Board finds SBA 910 Award #423 to have dealt with the Organization's contention that, under Rule 15, extra work -- in that particular case relief service work -- belongs to employees on the extra list. The Carrier maintained that Rule 15 did not preclude it from using the crew of a traveling road switcher to recrew an outlawed road train and that Rule 23 (a) contemplates that road trainmen may be required to perform two or more classes of road service in a day or trip. The Board agreed with the Carrier's position. In the present case, the Board is not persuaded that the Carrier's assignment of Claimants to perform relief service outside their advertised working limits on July 21, 1988, or its compensation of them for that day, violated Rules 15, 8, 9 or 46 as contended in the Joint Submission. In fact, this use and compensation of the crew seems to have been consistent with Rules 23(a) and 8(c).....
>
> "Award The claim is **DENIED."**

12/22/98 crbdawds

SBA 910 – Award No. 684 – Claimants were used in short turnaround service (Rule 11) which involved relieving a Traveling Road Switcher. They claimed the five (5) day Traveling Road Switcher rate of pay. **SUSTAINED.**
March 99

SBA 910 – Award No. 933 – Assignment advertised over two (2) different routes to the same terminal. It did not operate over one (1) of the routes during the month in question. Claim filed under Rule 8 Q&A #2. **DENIED.**
5/4/00

RULE 9 - ASSIGNED ROAD SERVICE

SBA 910 - Award No. 401 - Claim **SUSTAINED** for one days' pay for using a crew in advance of their advertised reporting times on other than their symboled train. Good case to refer to for a in depth understanding regarding Rule 9 as well as compliance with Rule 67 not being an excuse to violate another rule.

SBA 910 - Award No. 317, CRT-4676 - Assigned service crew used out of their away from home terminal on the day following the day they were advertised to work. **SUSTAINED** for one day's pay.

RULE 9 - cont.

CRT-5421 - Claim for one day's pay for working other then assigned train prior to advertised reporting time. **SUSTAINED.**

CRT-4879 - Assigned service crew worked Train TV 27 Harrington to Enola on 1/18/87 as advertised. Not used as advertised on Train ENES on 1/30/87 from Enola back to Harrington. Crew held until 9:15 AM on 1/31/87 and then deadheaded back to Harrington. Claimed a days' pay which was **SUSTAINED.**
NOTE: Train ENES did not operate on 1/30/87.

SBA 910 - Award No. 287 - Crew in assigned service used on their symboled train on the day following the day they were scheduled to operated out of their away from home terminal. **SUSTAINED** for held time in accordance with Q&A #5 of Rule 9.

SBA 910 - Award No. 288 - Crew in assigned service between Buffalo and Selkirk on Train TV-10/SEIN. They were deadheaded from Buffalo to Selkirk, held for 20 hours and 40 minutes and returned on lite engines. Claim **SUSTAINED** for held time in excess of 16 hours on the basis that the crew was used in unassigned service.

SBA 910 - Award No. 435 - Assigned service crew used on other than their assigned train and outside of the advertised sign up time of the assignment. **SUSTAINED** for one day. (Also see SBA 910 - Awards No. 437, and 439. See Award No. 435 for a definition of 8 hours window.)

SBA 910 - Award No. 436 - Crew advertised to operate Train SEMB were used on SEMB-OX with the same reporting time as advertised. (**SUSTAINED** for one day.) (Also see SBA 910 - Award No. 438.)

SBA 910 - Award No. 440 - Claimants in interdivisional service subject to call for the first extra out of away from home terminal. They claimed they were mishandled due to not being used on a intraseniority district run. **DENIED**

SBA 910 - Award No. 463 - See the following language: "Nothing in Rule 9 gives the Carrier the latitude to arbitrarily advertise an assignment as regular in assigned service and work the assignment in unassigned service. The Carrier has violated Rule 9".

SBA 910 - Award No. 350 - Crew advertised to report at 11:00 AM at away from home terminal for SEMB. Crew reported at 11:00 AM and was used on SEMB-1X. Claimed a days pay for not being used on assigned train. Claim **DENIED**.

CRT-9269 - The Claimants were assigned in turn service advertised to report at Detroit, MI, for Train DNES to operate in through freight service to Toledo, OH and return on Train TOCP to Detroit. The Claimants submitted penalty timeslips, one for each date of claim, requesting one day's pay for not being used on TOCP, their advertised return train. **SUSTAINED**.

RULE 9 - cont.

CRT-11893 – Assigned service employee used on other than his symboled train. Claimant allowed a penalty payment of eight (8) hours.... Also see CRT-12034.
12/22/98 crbdawds

CRT-12263 – **SUSTAINED** for one (1) day's pay because the Carrier used the Claimant on other than his assigned train.
5/4/00

RULE 10 - LAP-BACKS - SIDE TRIPS

SBA 910 - Award No. 406 - Lap back when setting out a shop car. **SUSTAINED**. Also see CRT-6579, CRT-6898 and CRT-6977.

SBA 910 - Award No. 502 - Side trip claimed within yard limits of foreign Carrier. **DENIED**.

SBA-910 - Award No. 642 - crew in straight away service West Brownsville to Conway were deadheaded to Thomson for their engines. Worked back towards West Brownsville to pick up their train at Peters Creek which is an intermediate point between West Brownsville and Conway, worked back to Thomson through to Conway. **SUSTAINED** for a lap-back between Thomson and Peters Creek under Rule 10(b).
12/18/95 crbdawds

CRT-11256 – Claimant operated beyond the limits of his assignment for which he claimed compensation in accordance with Rule 10(b). **SUSTAINED.**
12/22/98 crbdawds

RULE 11 - SHORT TURNAROUND FREIGHT SERVICE

CRT-9972 - Involves a case where the claimant was called in Short Turnaround service and then used for one round-trip beyond 25 miles. Claim **SUSTAINED** for 8 hours for being used other than as provided in Rule 11. Also see CRT-9050.

CRT-10208 - Claim **SUSTAINED** for eight (8) hours for the extra list employee who stood first out when a crew called in Short Turnaround Service was used beyond the 25 mile limit.
12/18/95 crbdawds

SBA 910 - Award No. 735 - A crew ordered under Rule 11, is used in violation of Rule 11, which constituted two (2) different assignments for which Claimant was only paid the Reduced Crew and Productivity Allowance for the first assignment. The Board **SUSTAINED** our claim for the Reduced Crew Allowance and the Productivity Allowance for the second assignment.
12/20/96 crbdawds

RULE 11 - cont.

SBA 910 – Award No. 897 – This is the same case as in Award No. 735, but the Board ruled against us in this case. See Organization Member's Dissent.
5/400

CRT-11058 - Claim **SUSTAINED** for 8 hours in regard to the following:

> Claimants were used contrary to Rule 11, i.e., they made two (2) trips out of Conway, the second of which was beyond 25 miles and when combined with the
> first trip, the total miles run was in excess of 100 miles. The Carrier based its denial on insufficient information on the timecard.

We took the position that the information on the service ticket was complete and we argued that if the Carrier needed more information all they had to do was consult the service ticket. Apparently, that was what was done to handle the case as a Joint Submission inasmuch as the Joint Statement of Facts contains all the pertinent information.
12/20/96 crbdawds

CRT-11267 - **SUSTAINED**
Joint Statement of Agreed Upon Facts: - Claimant was assigned to the Westbound Conductors' extra board at Harrisburg Consolidated Terminal (HCT) and on the date in question was ordered for Short Turnaround Freight Service.

Upon reporting for duty, the Claimant was instructed to deadhead from HT to CP-Jacks on the Pittsburgh Line to recrew Train PIBE-0, Engine 5613 and deliver the train to HCT. Upon completion of the above-outlined service, the Claimant was then required to deadhead a second time from HCT to CP-Wye on the Buffalo Line to recrew Train BUHB-0, Engine 6520 and deliver train to HCT, after which he was relieved from duty. Claimant submitted a penalty time card claiming eight (8) hours account of exceeding the twenty-five (25) mile limit of Rule 11(a) in Short Turnaround Service.
12/20/96

SBA 910 - Award 702 - Claimants paid a new day for working beyond their final terminal to a point where they were turned back to their final terminal on lite engines. They claimed a second new day for the lite engine service. Board ruled that they were in turnaround service and they could make the return trip with lite engines. In other words, they were only entitled to one (1) day's pay instead of the two (2) days pay that was claimed. This was in addition to their service timecard from their initial terminal to the final terminal on the assignment worked prior to working beyond their final terminal.
12/18/97 crbdawds

RULE 11 - cont.

SBA 910 – Award No. 755 – (also see CRT-11382 and CRT-10834) – Crew ordered under Rule 11, but used under Rule 4, for one trip during the entire tour of duty which was beyond 25 miles to the turning point. Carrier argued the claimants' assignment was changed (Rule 84[d]) however, they failed to provide anything to support their allegations. Absent such support, the claim for one (1) penalty day for violating the conditions of Rule 11 was **SUSTAINED** i.e., crew operated beyond 25 miles to the turning point.
12/18/97 crbdawds

SBA 910 – Award No. 684 – Claimants were used in short turnaround service (Rule 11) which involved relieving a Traveling Road Switcher. They claimed the five (5) day Traveling Road Switcher rate of pay. **SUSTAINED.**
March 99

RULE 12 - CLASSIFYING TRAIN ENROUTE

CRT-11481 – CRT-11482 and CRT-11484 – all involve decisions that **SUSTAIN** a claim for eight (8) hours for a violation of Rule 12.
12/18/97 crbdawds

RULE 13 - CALLING CREWS - POOLS AND ROAD EXTRA SERVICE

SBA 910 - Award No. 424 - Road crew used out of their final terminal to relieve another road crew. Claim **SUSTAINED** for 1 day for extra list employees who stood to work the assignment.

SBA 910 - Award No. 671 - Claim **SUSTAINED** in behalf of a pool crew rested at the home terminal when the Carrier used an extra crew out of their away-from-home terminal in service protected by the pool.
12/18/95 crbdawds

RULE 15 - POOLS AND ROAD EXTRA LISTS

SBA 910 - Award No. 191 - Involves relief service, i.e., It should go to the extra list as opposed to pool crews when the relief service takes place between the two terminals of the pools. Also see Award 115 of PLB 2570.

SBA 910 - Award No. 423 - Traveling Switcher used to relieve road assignment - Claim from extra list employee **DENIED**.

CRT-10208 - Claim **SUSTAINED** for eight (8) hours for the extra list employee who stood first out when a crew called in Short Turnaround Service was used beyond the 25 mile limit.
12/18/95 crbdawds

Rule 15 - cont.

SBA 910 - Award No. 671 - Claim **SUSTAINED** in behalf of a pool crew rested at the home terminal when the Carrier used an extra crew out of their away-from-home terminal in service protected by the pool.
12/18/95 crbdawds

SBA-910 - Award No. 719 - This decision sets the record straight in regard to the Carrier's misapplication of Rule 23. Said Rule deals with different classes of Road Service that can be worked during a tour of duty **as part of the same assignment.**

In Award Nos. 661, and 662, of this Board, the Carrier deliberately mislead the Neutral Member of the Board into believing that Rule 23 of the Conrail/UTU Agreement is unique to Conrail, which was proven to be false, as UTU showed in Labor's dissent to Awards 661 and 662. Rule 23 dates back to Board of Arbitration No. 168. On December 3, 1952, Board of Arbitration 168 answered the following questions:

> **"QUESTION NO. 1:** 'Should Any Rule Covering More Than One Class of Road Service Be Granted?'
>
> "The Board finds there is no controversy over this question. All parties to this proceeding now agree, as a matter of record, that there should be a rule."
>
> **"QUESTION NO. 2:** 'What shall be the language of the rule?'
>
> "Subject to and in keeping with the provisions of Paragraph 4 of the Arbitration Agreement of July 17, 1952, the Board finds that a new rule should be awarded as follows."

The Rule the Board awarded was Rule 23. Stated differently, the Board awarded a Rule in the matter of "More Than One Class of Road Service" which was applied Nationally and adopted by Conrail and the UTU (C&T) as Rule 23 of the Agreement dated September 1, 1981.

The decisions that evolved over the years in connection with the "More Than One Class of Road Service" rule, consistently held that the Rule only has application in instances where a different class of road service is performed in connection with the same assignment. Conrail deceived the Neutral Member of Special Board of Adjustment No. 910 in Awards 661 and 662 into discounting all the precedent that serves to support the aforesaid. Conrail did so by claiming Rule 23 was a different "More Than One Class of Road Service" rule, then that awarded by Arbitration Board No. 168.

In Awards 661 and 662, UTU used Conrail's Rule of the Month, June, 1986, as an Exhibit to verify the fact that Rule 23, and the Award of Arbitration Board No. 168 are one and the same. Said document was issued by Conrail to their Field Officers as guidance in applying Rule 23. As part of that directive, Conrail advised as follows:

> "However, before the digest is listed, it should be pointed out that the original rule written in 1952 by Board of Arbitration No. 168 is the same rule as those found in our agreements today. The only difference being the paragraph numbers and letters."

In the instant case, the UTU left nothing to chance. UTU admitted the Award of Arbitration Board No. 168 in its entirety. That lead the Neutral Member of the Board to recognized that the Claimant had not been involved in working "More Than One Class of Road Service" within the same assignment. What was involved, is an employee who was assigned to work from Conway, PA to West Brownsville, PA on Train XWB-46. Enroute, the Carrier terminated that assignment at Thomson, PA, an intermediate point between Conway, PA and West Brownsville, PA. Claimant was then used on a second assignment, Train UWT-40, Thomson, PA to Conway, PA. Inasmuch as it was shown that Rule 23 had no application, what remained was to apply Rule 4 which reads in part pertinent:

RULE 4 - Basic Day and Overtime Road Freight Service

> "(a) In road freight service, 100 miles or less, 8 hours or less (**straightaway** or turnaround) **will constitute a day's work.**
>
> **"NOTE:** The 100 mile day has been increased in Through Freight Service as set forth in the Agreement of June 28, 1985 and February 18, 1992, however, the increase in basic day miles has no bearing on the instant case."

The Carrier limits their dissent to Rule 25, as if that was the only Rule upon which the Organization had relied, which is false. We cited Rules 4, 15, 25 and 63 as controlling. Moreover, the decision made it abundantly clear that the findings in favor of the employees was based on the following:

> "The Board is not persuaded that Rule 23 contemplates this situation, and the Board concludes that Claimant is entitled to additional compensation for his service on September 19 and 20, 1993."

RULE 15 - cont.

SBA 910 - Award No. 639 - See award for the following:

> "Claimants were working Traveling Road Switcher assignment WNFR-22 on July 21, 1988. Claimants were required to perform relief service outside their advertised working limits during their tour of duty that day. They operated Train TV-14 from Framingham, Massachusetts to Beacon Park at Boston, Massachusetts. They were then transported back to Framingham, Massachusetts where they resumed their normal WNFR-22 duties. Claimants submitted penalty timeslips for one day's pay for an alleged violation of Rule 8. The Carrier allowed them 1 hour and 40 minutes in addition to their service trip under Rule 8(c).....
>
> "The Board finds SBA 910 Award #423 to have dealt with the Organization's contention that, under Rule 15, extra work -- in that particular case relief service work -- belongs to employees on the extra list. The Carrier maintained that Rule 15 did not preclude it from using the crew of a traveling road switcher to recrew an outlawed road train and that Rule 23 (a) contemplates that road trainmen may be required to perform two or more classes of road service in a day or trip. The Board agreed with the Carrier's position. In the present case, the Board is not persuaded that the Carrier's assignment of Claimants to perform relief service outside their advertised working limits on July 21, 1988, or its compensation of them for that day, violated Rules 15, 8, 9 or 46 as contended in the Joint Submission. In fact, this use and compensation of the crew seems to have been consistent with Rules 23(a) and 8(c).....
>
> "Award The claim is **DENIED."**

12/22/98 crbdawds

SBA 910 – Award No. 906 – Road Crew stopped enroute to work a train destined for the terminal from which they departed. After working back into their initial terminal, they were deadheaded back to the point where they left the train to which assigned, and they completed the trip to their final terminal. Their claim for a separate day for the service back into their initial terminal was DENIED. See Labor's dissent.
5/4/00

RULE 17 - POOLED CABOOSES

SBA-910 - Award No. 695 - Claim for two (2) hours for working with a caboose not equipped in accordance with Rule 17 is **DENIED.** The Referee relied upon Rule 17 (g), i.e.:

RULE 17 – cont.

SBA-910 - Award No. 695 – cont.

> "As provided in Rule 17(g), Claimants were not required to leave their initial terminal with a caboose which was not in proper condition and they could not properly have been disciplined for not leaving the terminal with such a caboose. However, in each of these instances Claimants apparently chose to leave the terminal and operate with this caboose. Under these circumstances the claim will be denied."

12/20/96 crbdawds

RULE 18 - CREW CONSIST

SBA 910 - Award No. 253 - Productivity allowance **DENIED** when transferring from one Conrail seniority district to another.

SBA 910 - Award No. 329 - Yardmaster operating switch - Carrier contended he did not. Claim **SUSTAINED**. Carrier should have produced a statement from the yardmaster.

SBA 910 - Award No. 460 - Reduced crew allowance claimed when deadheading. **DENIED**

SBA 910 - Award No. 651 - The facts as stated in our brief read:

> "On September 1, 1992, Through Freight Assignment PIMO-1 from Conway, PA to Enola, PA arrived Enola, PA with 131 cars. The crew assigned was an Engineman and a Conductor. The Brakeman's position on the assignment in question had been eliminated by agreement between the United Transportation Union and the Consolidated Rail Corporation dated February 18, 1992.
>
> "Train PIMO-1 pulled in on Track No. 13 in the Eastbound Receiving Yard to yard the rear 81 cars. The head 50 cars were to be set-over to the Westbound Hump which required the Conductor to leave the head-end of the train and make a cut behind the 50 cars. After the cut was made, the move continued with the Conductor at the rear of the remaining 50 car train in order to stop the movement after clearing the switch for the reverse move to the Westbound Hump. In the process of moving forward, the Engineer encountered the Inbound Diesel switch which was lined against the movement. Instead of using a Utility Brakeman or waiting for the Conductor to come forward, both of which are contemplated by the Agreement of February 18, 1992, the Carrier via the West End Yardmaster ordered the Engineman to detrain, line the switch for the movement and return to the engine, after which the movement was continued.

RULE 18 - cont.

SBA 910 - Award No. 651 – cont.

> "The Claimant was first out and available at 7:55 AM on the Enola West Extra Trainmen's list when Engineman Carstetter operated the switch. He filed a claim for one (1) day's pay on the basis Engineman Carstetter's action at the direction of the Carrier had infringed on his seniority and work rights as a Trainman. Said claim was denied."

The Board ruled in part here pertinent as follows:

> "Under the circumstances of record, the Conductor on Train PIMO-1 was close enough to have been utilized to perform the function."

The only down side was that the Board ruled the proper claimant would be the Conductor on the assignment, rather than the person standing first to call on the extra list. In the future, the Conductor on the assignment should file the claim which is easier, because he/she will know of the violation.
12/20/96 crbdawds

SBA 910 - Award No. 735 - A crew ordered under Rule 11, is used in violation of Rule 11, which constituted two (2) different assignments for which Claimant was only paid the Reduced Crew and Productivity Allowance for the first assignment. The Board **SUSTAINED** our claim for the Reduced Crew Allowance and the Productivity Allowance for the second assignment.
12/20/96 crbdawds

SBA 910 – Award No. 897 – Same Case as SBA 910, Award No. 735 except the claim was **DENIED.** See dissent.
5/4/00

SBA 910 – Award No. 619 – Helper Brakeman was used to attach six (6) cars to the rear of a train before acting as the Helper Engine for the train the cars were attached thereto. Claim for one (1) day's pay for a violation of the crew consist agreement for requiring a Helper Brakeman to handle the six (6) cars was **DENIED.**
12/18/97 crbdawds

PLB 5441 – Award No. 76 – Reserve Board Pay claimed in addition to working as a Yardmaster. **SUSTAINED.** Filed in Rule 18 Conrail.
5/4/00

RULE 19 - INITIAL TERMINAL DELAY - FREIGHT SERVICE

SBA 910 - Award No. 150 - Initial terminal delay continues after leaving first yard track if another pick-up is made within the initial terminal. In other words, the NOTE to Rule 19 is interpreted to mean when the entire train is made up on the last yard track at the initial terminal and the train actually starts in motion from the last yard track.

SBA 910 - Award No. 330 - Crew departed yard track but was relieved at the initial terminal at another location. Referee **SUSTAINED** the claim for initial terminal delay, based on the fact the claimants did depart the initial terminal when they were deadheaded in combined service to their final terminal.

RULE 20 - FINAL TERMINAL DELAY - FREIGHT SERVICE

CRT-7969 - On May 14, 1991, the Claimants were called for short turnaround service at Conway, PA. The Claimants reported for duty at 11:45 AM, were transported by taxi to CP-Wood, and operated Train DNES-3 to Conway Yard. The Claimants arrived at West Conway at 1:40 PM and cleared same at 1:45 PM. At 5:15 PM, the Claimants were instructed to recrew a second train, ELPI-4, at CP-Shale, 46 miles from Conway. The Claimants were issued a new timeslip, and claimed a second trip from 5:15 PM to 11:15 PM. On their first timeslip they requested payment of 2 hours and 35 minutes' final terminal delay, from 1:40 PM to 5:15 PM, less one hour "free" time, which was **SUSTAINED**.

SBA 910 - Award No. 471 - **SUSTAINED** for final terminal delay while crew was being drug tested at their final terminal.

RULE 21 - HELD-AWAY-FROM-HOME TERMINAL TIME

CRT-7555 - Held time paid to a regular assigned crew used out of the away-from-home-terminal on other than their symboled train.

PLB 910 - Award No. 214 - Held time paid to the time deadheading starts, not when ordered to deadhead.

SBA 910 - Award No. 287 - Crew in assigned service used on their symboled train on the day following the day they were scheduled to operated out of their away-from-home-terminal. **SUSTAINED** for held time in accordance with Q&A #5 of Rule 9.

SBA 910 - Award No. 288 - Crew in assigned service between Buffalo and Selkirk on Trains TV-10/SEIN. They were deadheaded from Buffalo to Selkirk, held for 20 hours and 40 minutes and returned on lite engines. Claim **SUSTAINED** for held time in excess of 16 hours on the basis that the crew was used in unassigned service.

RULE 21 – cont.

SBA 910 - Award No. 462 - Assigned service crew used out of the away from-home-terminal on other than their symboled train. Claim for held time **SUSTAINED**. Pay special attention to the following language: "there is no dispute that the symbol train did or did not run on the dates of the claim. If it ran, the claimant and his crew should have operated it as called for in the advertisement. If it did not run, the crews should not have been held at the away-from-home-terminal."

SBA 910 - Award No. 463 - Claim **SUSTAINED** for held time when a regular assigned crew was used in unassigned service.

RULE 23 - MORE THAN ONE CLASS OF ROAD SERVICE

PLB-299 - Award No. 1 - Performing service on a Wreck Train, yarding the Wreck Train and then proceeding on a road trip in Traveling Road Switcher service constitutes two (2) separate tours of duty. It does not constitute two (2) different classes of Road Service.
12/18/95 crbdawds

SBA-910 - Awards 661 and 662 - Neutral DiLauro's decisions in regard to Rule 23 with our dissent which we hope will serve to neutralize these decisions.
12/18/95 crbdawds

PLB-1401 - Award No. 4 contains an explanation of Rule 23 which is Arbitration Award No. 168. Referring to Arbitration Award No. 168 the Board stated: "The latter applies whenever more than one class of road service is performed in a day or trip."
12/18/95 crbdawds

See PLB-1312 - Award No. 532 - for a decision where hauling the Sperry Rail Car in service on the rear of a passenger train constitutes a different class of road service, i.e., passenger service and freight service. (Filed in Rule 23 - Conrail) 12/18/95 crbdawds

CRT-11054 - Statement of Facts: The Claimant worked two (2) assignments back to back, i.e.; 1) Relief for Train WISP-08 between Shire Oaks and MP-42 on-duty 8:00 a.m. and off-duty 10:25 a.m., 2) Shire Oaks to Mingo Junction and return in Turnaround Through Freight Service, Assignment WISO-01. The Carrier combined two (2) assignments into one (1) on the basis that Rule 23 is controlling.

Employees Position: Rule 4 is controlling, therefore, the Claimant is entitled to be paid separately (a new day for the second assignment) for each assignment.

RULE 23 – cont.

CRT-11054 – cont.

Decision of the Carrier is stated in their letter dated July 8, 1996:

> "In lieu of the payment previously allowed for May 31, 1995, the Claimant will be allowed payment of one day from 8:00 a.m. until 10:25 a.m. and payment for a second day beginning at 10:25 a.m. in full and final settlement of the claim, without precedent. You later will be advised of the amount and pay period in which the payment is made."

12/20/96 - crbdawds

SBA-910 - Award No. 719 - This decision sets the record straight in regard to the Carrier's misapplication of Rule 23. Said Rule deals with different classes of Road Service that can be worked during a tour of duty as part of the same assignment.

In Award Nos. 661, and 662, of this Board, the Carrier deliberately mislead the Neutral Member of the Board into believing that Rule 23 of the Conrail/UTU Agreement is unique to Conrail, which was proven to be false, as UTU showed in Labor's dissent to Awards 661 and 662. Rule 23 dates back to Board of Arbitration No. 168.

The Rule the Board awarded was Rule 23. Stated differently, the Board awarded the "More Than One Class of Road Service" rule which was applied Nationally and adopted by Conrail and the UTU (C&T) as Rule 23 of the Agreement dated September 1, 1981.

The decisions that evolved over the years in connection with the "More Than One Class of Road Service" rule, consistently held that the Rule only has application in instances where a different class of road service is performed in connection with the same assignment. Conrail deceived the Neutral Member of Special Board of Adjustment No. 910 in Awards 661 and 662 into discounting all the precedent that serves to support the aforesaid. Conrail did so by claiming Rule 23 was a different "More Than One Class of Road Service" rule, then that awarded by Arbitration Board No. 168.

In Awards 661 and 662, UTU used Conrail's Rule of the Month, June, 1986, as an Exhibit to verify the fact that Rule 23, and the Award of Arbitration Board No. 168 are one and the same. Said document was issued by Conrail to their Field Officers as guidance in applying Rule 23. As part of that directive, Conrail advised as follows:

> "However, before the digest is listed, it should be pointed out that the original rule written in 1952 by Board of Arbitration No. 168 is the same rule as those found in our agreements today. The only difference being the paragraph numbers and letters."

In the instant case, the UTU left nothing to chance. UTU admitted the Award of Arbitration Board No. 168 in its entirety. That lead the Neutral Member of the Board to recognized that the Claimant had not been involved in working "More Than One Class

of Road Service" within the same assignment. What was involved, is an employee who was assigned to work from Conway, PA to West Brownsville, PA on Train XWB-46. Enroute, the Carrier terminated that assignment at Thomson, PA, an intermediate point between Conway, PA and West Brownsville, PA. Claimant was then used on a second assignment, Train UWT-40, Thomson, PA to Conway, PA. Inasmuch as it was shown that Rule 23 had no application, what remained was to apply Rule 4 which reads in part pertinent:

> **RULE 4 - Basic Day and Overtime Road Freight Service**
>
> "(a) In road freight service, 100 miles or less, 8 hours or less (straightaway or turnaround) will constitute a day's work.
>
> "NOTE: The 100 mile day has been increased in Through Freight Service as set forth in the Agreement of June 28, 1985 and February 18, 1992, however, the increase in basic day miles has no bearing on the instant case."

The Carrier limits their dissent to Rule 25, as if that was the only Rule upon which the Organization had relied, which is false. We cited Rules 4, 15, 25 and 63 as controlling. Moreover, the decision made it abundantly clear that the findings in favor of the employees was based on the following:

"The Board is not persuaded that Rule 23 contemplates this situation, and the Board concludes that Claimant is entitled to additional compensation for his service on September 19 and 20, 1993."
12/18/97 crbdawds

SBA 910 - Award No. 639 - See award for the following:

> "Claimants were working Traveling Road Switcher assignment WNFR-22 on July 21, 1988. Claimants were required to perform relief service outside their advertised working limits during their tour of duty that day. They operated Train TV-14 from Framingham, Massachusetts to Beacon Park at Boston, Massachusetts. They were then transported back to Framingham, Massachusetts where they resumed their normal WNFR-22 duties. Claimants submitted penalty timeslips for one day's pay for an alleged violation of Rule 8. The Carrier allowed them 1 hour and 40 minutes in addition to their service trip under Rule 8(c).....
>
> "The Board finds SBA 910 Award #423 to have dealt with the Organization's contention that, under Rule 15, extra work -- in that particular case relief service work -- belongs to employees on the extra list. The Carrier maintained that Rule

RULE 23 – cont.

SBA-910 - Award No. 639 – cont.

> 15 did not preclude it from using the crew of a traveling road switcher to recrew an outlawed road train and that Rule 23 (a) contemplates that road trainmen may be required to perform two or more classes of road service in a day or trip. The Board agreed with the Carrier's position. In the present case, the Board is not persuaded that the Carrier's assignment of Claimants to perform relief service outside their advertised working limits on July 21, 1988, or its compensation of them for that day, violated Rules 15, 8, 9 or 46 as contended in the Joint Submission. In fact, this use and compensation of the crew seems to have been consistent with Rules 23(a) and 8(c).....
>
> "Award The claim is **DENIED."**

12/22/98 crbdawds

SBA 910 – Award No. 684 – Claimants were used in short turnaround service (Rule 11) which involved relieving a Traveling Road Switcher. They claimed the five (5) day Traveling Road Switcher rate of pay. **SUSTAINED.**
March 99

SBA 910 – Award No. 906 – Road Crew stopped enroute to work a train destined for the terminal from which they departed. After working back into their initial terminal, they were deadheaded back to the point where they left the train to which assigned, and they completed the trip to their final terminal. Their claim for a separate day for the service back into their initial terminal was DENIED. See Labor's dissent.
5/4/00

RULE 24 - INTRASENIORITY AND INTERSENIORITY DISTRICT SERVICE

SBA 910 - Award No. 387 - Crew claiming earnings of assignment when held at away-from-home terminal. Could not cover next trip.
DENIED.

CRT-6531 and CRT- 6532 - Service established under 3-C-1 subject to Rule 24. Crew used short of final terminal returned to home terminal. Paid full mileage to final terminal plus separate deadhead.

SBA 910 - Award No. 422 - Held time for regular assignment with built in layover of 24 or more hours. Organization took the position the assignment was contrary to Rule 24 (I)(1). **DENIED.**

RULE 24 – cont.

CRT-9507 - On December 10, 1992, the Claimant was assigned to an extra list and he was called in pool freight service pursuant to Rule 13 (i) as the Conductor on Train SPL-101 operating in through freight service from Port Jervis, NY to Gang Mills, NY. Upon arrival at Lansboro, PA MP 190, an intermediate point for his assignment, the Claimant was instructed by the Chief Dispatcher to stop his train, board Train BUOI-0 and return to Port Jervis.

For all service performed, the Claimant was compensated $227.80 for the 206 miles from Port Jervis to Gang Mills on Train SPL-101 and $133.58 for 118 miles from MP 190 to Port Jervis on Train BUOI-0. The Claimant requested payment of the full round trip mileage, Port Jervis to Gang Mills and return, 412 miles, in lieu of the mileage previously allowed.

The Claimant allowed payment of the difference in the mileage previously compensated for on December 10, 1992 and the 412 miles claimed.

CRT-10526 - Claimant cut off enroute between his initial and final terminal, which was also his away from home terminal, and returned to his initial terminal with a different train. Paid the full mileage to the final terminal, and a separate deadhead day from the away from home terminal to his home terminal in lieu of the amount previously allowed which was the actual miles run.
12/20/96 crbdawds

SBA 910 - Award No. 621 - Claimants were assigned to the Thompson Extra List and were called for extra helper service on Yard Assignment HLP-400. After reporting for duty claimants were instructed to couple to the rear of Train USS-027, (Mile post 13.4) located on the Mon Line in Seniority District E, and perform helper service by shoving Train USS-027 west, via CP Bell, to CP Leets on the Fort Wayne Line in Seniority District D, a distance of approximately 24 miles. In the performance of such helper service claimant departed Conrail Seniority District "E" and entered Conrail Seniority District "D" at Monon, which is located at MP6 on the Mon Line.

On January 23, 1990, the claimants submitted a penalty time slip claiming eight hours' penalty pay (in addition to their normal compensation), based on the position of the Union that the carrier had improperly required claimants to perform interseniority road freight service on a foreign seniority district without having satisfied the threshold requirements specified in Rule 24. In denying the claim, the Neutral member of the Board wrote the following:

> "The organization's efforts to protect their member's relative seniority against encroachment from other districts was the focus of Rule 24. However, helper service is more *serendipitous* service, which cannot be reliably predicted or

SBA 910 - Award No. 621 – cont.

> qualified in advance. Furthermore, as affirmed by many awards, including the progeny of Award No. 14461 (supra), crews involved in helper service necessarily adopt, and are subject to, the same rules governing the assisted train's regular crew."

12/20/96 crbdawds

SBA 910 – Award No. 694 – This case involves time claims in regard to equity. See the findings of the Board for the following:

> "Turning again to the merits of the claim, this Referee finds that Article 90 of the Union's Constitution vests in the Union proper jurisdiction to resolve the instant claims. Article 90 states in relevant part:
>
> > ARTICLE 90 – MERGERS, LEASES, COORDINATIONS, ETC.
> >
> > [w]here, because of establishment of a new line by an existing carrier or for other reasons traffic is permanently diverted from . . . one road and/or yard seniority district to another on the same carrier and such affects the seniority rights of employees on such carriers, General Committees of Adjustment shall arrange for a fair and equitable division of the work.
> > . . .
> > Disputes arising under this Article which cannot be resolved by the General Committee or General Committees shall be referred to the International President. The International President shall promptly assign an officer to assist the General Committee or General Committees involved in resolving the dispute. Failing to resolve the dispute the officer shall make a complete report and recommendation to the International President who, in turn, shall decide the dispute.
>
> The Employer cited several awards in support of its position. After reviewing these awards, this Referee finds Award No. 529, in which a claim was denied upon a finding that the work dispute involved was intra-union in nature, to be dispositive in this case.
>
> Therefore, in light of the foregoing reasons, the Claimant's claim is **denied**."

12/18/97 crbdawds

CRT-11974 – Crew cut-off prior to reaching final terminal and deadheaded back to their initial terminal. In accordance with Rule 24 (I) (5) claimants were paid as if they had completed the trip to the final terminal and in addition thereto, claimants were allowed a separate deadhead day from the final terminal to the initial terminal.

12/22/98 crbdawds

RULE 24 - cont.

SBA 910 – Award No. 934 – Rule 24 is found to supersede the Agreement of September 7, 1994 as follows:

> "The September 7, 1994, agreement does not state that Shire Oaks Traveling Switcher pools will protect all service originating at Shire Oaks destined for points east of Conemaugh when this service operates through Conemaugh. The September 7, 1994, agreement allowed these pools to protect service between Shire Oaks and Conemaugh. It had no applicability to service operating eastward through Conemaugh. Therefore, the Claimants did not have the exclusive right to operate Train UBT-484 on April 28, 1997, that operated from Shire Oaks to Altoona. Their claims are **DENIED** as a result."

5/4/00

RULE 25 - CUT OFF ENROUTE

CRT-2740 - Cut off at initial terminal after 7 1/2 hours on duty and put back in for rest. Time claimed from when rest was up. (**SUSTAINED**)

SBA-910 - Award No. 719 - This decision sets the record straight in regard to the Carrier's misapplication of Rule 23. Said Rule deals with different classes of Road Service that can be worked during a tour of duty **as part of the same assignment.**

In Award Nos. 661, and 662, of this Board, the Carrier deliberately mislead the Neutral Member of the Board into believing that Rule 23 of the Conrail/UTU Agreement is unique to Conrail, which was proven to be false, as UTU showed in Labor's dissent to Awards 661 and 662. Rule 23 dates back to Board of Arbitration No. 168.

The Rule the Board awarded was Rule 23. Stated differently, the Board awarded the "More Than One Class of Road Service" rule which was applied Nationally and adopted by Conrail and the UTU (C&T) as Rule 23 of the Agreement dated September 1, 1981.

The decisions that evolved over the years in connection with the "More Than One Class of Road Service" rule, consistently held that the Rule only has application in instances where a different class of road service is performed in connection with the same assignment. Conrail deceived the Neutral Member of Special Board of Adjustment No. 910 in Awards 661 and 662 into discounting all the precedent that serves to support the aforesaid. Conrail did so by claiming Rule 23 was a different "More Than One Class of Road Service" rule, then that awarded by Arbitration Board No. 168.

In Awards 661 and 662, UTU used Conrail's Rule of the Month, June, 1986, as an Exhibit to verify the fact that Rule 23, and the Award of Arbitration Board No. 168 are one and the same. Said document was issued by Conrail to their Field Officers as guidance in applying Rule 23. As part of that directive, Conrail advised as follows:

RULE 25 - cont.

SBA-910 - Award No. 719 - cont.

> "However, before the digest is listed, it should be pointed out that the original rule written in 1952 by Board of Arbitration No. 168 is the same rule as those found in our agreements today. The only difference being the paragraph numbers and letters."

In the instant case, the UTU left nothing to chance. UTU admitted the Award of Arbitration Board No. 168 in its entirety. That lead the Neutral Member of the Board to recognized that the Claimant had not been involved in working "More Than One Class of Road Service" within the same assignment. What was involved, is an employee who was assigned to work from Conway, PA to West Brownsville, PA on Train XWB-46. Enroute, the Carrier terminated that assignment at Thomson, PA, an intermediate point between Conway, PA and West Brownsville, PA. Claimant was then used on a second assignment, Train UWT-40, Thomson, PA to Conway, PA. Inasmuch as it was shown that Rule 23 had no application, what remained was to apply Rule 4 which reads in part pertinent:

RULE 4 - Basic Day and Overtime Road Freight Service

> "(a) In road freight service, 100 miles or less, 8 hours or less (**straightaway** or turnaround) **will constitute a day's work.**
>
> **"NOTE:** The 100 mile day has been increased in Through Freight Service as set forth in the Agreement of June 28, 1985 and February 18, 1992, however, the increase in basic day miles has no bearing on the instant case."

The Carrier limits their dissent to Rule 25, as if that was the only Rule upon which the Organization had relied, which is false. We cited Rules 4, 15, 25 and 63 as controlling. Moreover, the decision made it abundantly clear that the findings in favor of the employees was based on the following:

> "The Board is not persuaded that Rule 23 contemplates this situation, and the Board concludes that Claimant is entitled to additional compensation for his service on September 19 and 20, 1993."

12/20/96 crbdawds

CRT-11404 – Cut-off in route. Payment made under Rule 25, i.e., nine (9) hours and fifteen (15) minutes.

12/18/97 crbdawds

RULE 26 - TIME TO EAT - ROAD

PLB 909 - Awards No. 17, 18, and 19 - Deals with claims for a days' pay for not being allowed a meal period in road service. All **SUSTAINED** for 4 hours, Awards 17, and 19 are for a through freight assignment and No. 18 is for a work train.

SBA 910 - Award No. 491 - Claim for 8 hours for being denied time to eat in through freight service. Board denied this case on the basis operating conditions did not permit granting claimant's request.

CRT-10999 - Claimants in Traveling Switcher Service denied a meal period were paid two (2) hours each in lieu thereof. Also CRT-10798 (Pickell) same as CRT-10999.
12/20/96 crbdawds

SBA 910 – Award No. 920 – Claimant on a Through Freight Assignment is awarded two (2) hours for not being allowed a meal period enroute.
5/4/00

RULE 27 – TRANSPORTATION AT TERMINALS-ROAD SERVICE

PLB 5916 – Award No. 24 – filed in Rule 27 – Good case to refer to in regard to a delay in providing transportation.
5/4/00

RULE 28 – CONDUCTOR VACANCIES IN ROAD SERVICE

SBA-910 – Award No. 777 – Claimants were the incumbents on a pool assignment that protected service between Shire Oaks/Conway, Shire Oaks/Conemaugh and Shire Oaks/Southern Limits of West Brownsville. They were used partly between advertised limits but mostly beyond the working limits of their pool. They filed for time consumed beyond the limits of the pool under Rule 8(c). Carrier argued Claimants' status was that of an extra crew and that they became an extra crew because the Carrier had removed them from their assignment under Rule 67. The Board ruled on the matter in part here pertinent:

> "Rules 8(c) and 67 both provide a method for computing compensation under certain circumstances. If Claimants were in pool service and required to operate beyond the advertised limits of their pool assignment, Rule 8(c) would dictate how they would be paid. If, on the other hand, Claimants were taken from the pool and placed in other service, Rule 67 would govern their compensation. We do not read Rule 67 as giving Carrier the right to move employees from their assignments to perform other work. Rather, it merely sets the employees' compensation when Carrier exercises its right to move them. That right must be found elsewhere in the Agreement.

RULE 28 – cont.

SBA-910 – Award No. 777 – cont.

> Carrier has cited no Rule of the Agreement, other than Rule 67, that would give it the right to take Claimants out of pool service and put them on the job they worked. There are provisions for covering such work from the extra board, and there are provisions setting forth how vacancies are to be filled when the extra board is exhausted. It is evident Carrier did not comply with these provisions when it moved Claimants. Therefore, we must conclude they were not taken out of the pool. It follows, then, that Claimants must be compensated in accordance with Rule 8(c)."

12/18/97 crbdawds

SBA 910 – Award No. 841 – See award for the following:

"On August 26, 1995, Claimant was assigned as a conductor in Pool Crew UT06. At 9:15 pm on that date, Claimant was called to work as a conductor in Pool Crew UT04, and he declined. Thereafter, he was not permitted to work in his own crew at 9:20 pm because he had refused the call for the other pool. The Organization, consequently, now seeks the compensation Claimant would have earned had he worked his regular assignment. The Organization insists Claimant should not have been called for Pool Crew UT04 unless the Carrier had exhausted all of its alternatives under Rule 28. Therefore, reasons the Organization, Claimant had a right to decline the work without jeopardizing his own assignment.....

"The Organization has failed to establish that Carrier was not privileged to call Claimant for service as a conductor in Pool Crew UT04 in lieu of his working his assignment in Pool Crew UT06. First, it has not demonstrated that there were other employees available who should have been used instead of Claimant. While the Organization asks the Board to assume this to be the case simply because of the numbers of employees involved, more than an assumption is required before we will sustain a claim. Secondly, it is evident Claimant was set up to a pool crew to protect a vacancy pursuant to Rule 67. In this case, there is no evidence of a local agreement prohibiting moving an employee up to another pool crew, as mentioned in Rule 67. In this regard, this case is distinguished from Award No. 777 of this Board in that the Claimant therein was used in road switcher service and not in another pool crew. The Agreement was not violated in this case.

"AWARD: Claim **DENIED**."

12/22/98 crbdawds

RULE 29 - BASIC DAY - YARD SERVICE

SBA 910 - Award No. 653 - Claim of T. A. Obleman for earnings of B. D. Quarantello (assignment WOR203) on October 29, 1991.

RULE 29 – cont.

SBA 910 – Award No. 653 – cont.

Opinion of the Board:

On a day previous to the claim date, Claimant was determined to be unavailable for testing pursuant to Section VII paragraph B of carrier's Federal Railroad Administration (FRA) approved Random Drug Testing Plan. Pursuant to the Plan, his name was placed in a residual testing pool and he became subject to drug testing within the following 90 day period.

Claimant was notified to report for drug testing at 9:00 am on October 29, 1991. On that day he was assigned to the Clearfield, PA Trainmen's Extra List. He marked off the extra list with permission at 2:46 am and marked back up on the extra list at 10:45 am on the same date after providing a urine sample. Claimant was subsequently called from the extra list at 11:45 pm on that same date to report at Clearfield, PA as the Brakemen on through freight assignment COA-2X. Claimant was allowed one hour and 45 minutes pay at the through freight Brakeman's rate of pay from the time of his appointment for drug testing, 9:00 am, to the time he marked back up on the extra list, 10:45 am, pursuant to the provisions of Rule 95(c). On October 30, 1991, Claimant submitted a penalty time slip requesting payment of the earnings of Trainman B.D. Quarantello who was called from the Altoona Trainmen's Extra List for Work Train WOR-203 at 9:10 am on October 29, 1991.

The Board recognizes that the Organization has cited precedent standing for the proposition that Rule 67 is here applicable. Financial loss incurred by Claimant as a result of providing the federally mandated urine sample is, however, at most speculative. The assignment to which Claimant was eventually called on the claim date did compensate him better than the compensation earned by Quarantello on the same date. While the Board understands the ripple effect of assignments for an individual on the extra list, a rule of reason must be applied in each case of this type so as to prevent an employee from being unduly enriched. Under the totality of circumstances here present, it must be found that Claimant was adequately compensated. **DENIED.**
12/18/95 crbdawds

RULE 30 - WORK WEEK AND OVERTIME IN YARD SERVICE

PLB 3584 - Award No. 19 - Utility Brakeman taken off his assignment after performing service and placed on a yard crew. **SUSTAINED** for one days' pay at the time and one-half rate under Rule 30 (h).

SBA 910 – Award No. 866 – This is the same case as PLB 3584 – Award No. 19, except no service was performed by the Claimant during the period he was assigned as a Utility Brakeman. On that basis, the claim was **DENIED.**
5/4/00

RULE 30 – cont.

SBA 910 - Award No. 419 - A regular man worked 2:30 PM to 12:30 AM on a regular assignment. Used on another yard assignment at 12:30 AM until 2:00 AM when he was relieved. **SUSTAINED** for 8 hours at the time and one-half rate in accordance with Q&A #1.

PLB 4886 - Award No. 1 - Doubling from one yard assignment to another. Claim **SUSTAINED** for 8 hours at the time and one-half rate for the second assignment.

RULE 31 - PERFORMANCE OF SERVICE BY YARD TRAINMEN

SBA 910 - Award No. 133 - Yard crew performs Work Train Service within switching limits. Claim for additional day **DENIED.**

PLB 3584 - Award No. 12 - A yard crew used in road territory to deliver a car to a road crew. (**SUSTAINED**)

SBA-910 - Award No. 638 - **SUSTAINED** a claim for eight (8) hours when the Carrier required a yard crew from a contiguous switching district to move cars from one (1) point to another point all within the switching district other than the district where they reported and released. In essence the Board found that Rule 31 restricts the work a yard crew can do in a contiguous switching district where yard crew(s) are employed. The Rule grants the Carrier the right to use a yard crew to move cars between two contiguous switching districts, while reserving the yard work that takes place exclusively within each district for the yard crew(s) that report and release within the district where the work is performed.
12/18/95 crbdawds

SBA-910 - Award No. 673 - Yard crew changed an Air Hose while a carman was on duty. Claim for one (1) day's pay for performing service that should have been performed by a carman was **DENIED.**
12/18/95 crbdawds

SBA-910 - Award No. 655 - On the date of claim, April 1, 1991, claimants were assigned as the conductor and brakeman on yard assignment YSAN-31 with a work time between 4:00 pm and 12:00 midnight at South Anderson, IN. Claimants were timely notified that their assignments were annulled for one day, April 1, 1991. While claimants positions were laid in, Traveling Road Switcher WSAN did work at Phillips from 4:10 pm to 4:30 pm, switched six cars from Track No. 3 to Track No. 9 at South Anderson and classified the west bounds. On April 4, 1991, claimants submitted a penalty time card claiming a penalty yard day's pay which was **SUSTAINED.**
12/18/95 crbdawds

RULE 31, cont.

CRT-9767 - yard crew, at an intermediate point of a road crew's trip, is used to complete the trip of the road crew, after which they were returned to yard service at the intermediate point. Paid a road day in addition to remaining on continuous time on the yard timecard. Also see CRT-9770 (Maloof) for same type case except it was lite engine service which was settled on the same basis.
12/18/95 crbdawds

PLB 5441 – Award No. 70 – movement beyond switching limits **SUSTAINED.** Filed in Rule 31 – Conrail.
5/4/00

RULE 32 - STARTING TIMES IN YARD SERVICE

SBA 910 - Award No. 69 - Reverting time back on utility assignment. **SUSTAINED**

RULE 34 - MEAL PERIODS

- Special Arbitration in the matter of a yard crew being required to take their meal period on an engine.

BACKGOUND: By letter dated April 25, 1996, General Chairman A. L. Suozzo informed Manager Labor Relations R. N. McMeans that he had been made aware of yard service trainmen being required to take their meal period on an engine. Suozzo asserted such a practice was in violation of the Agreement and it was a matter that had been previously handled for correction by the then Senior Director-Labor Relations, Jan Lipps in 1991. McMeans responded that he was unaware of the events as asserted by Suozzo, but replied that requiring yard crews to take their lunch period on an engine, if necessary, would violate neither the spirit nor the intent of Rule 34.

Subsequent correspondence between the Union and the Carrier only reaffirmed their initial positions. After assigning Vice President R. D. Snyder to the matter, and not coming any closer to a resolution, International President Charles L. Little gave General Chairman Suozzo strike authority. Suozzo, on June 12, 1996, informed Senior Director Labor Relations J. F. Glass that the Union would strike the next time a yard crew is required to take their meal period on an engine. On June 17, 1996, Glass and Snyder agreed that the matter would be submitted to arbitration.

AWARD: The issue presented is answered in the negative. Carrier may not require yard crews engaged in industrial switching or transfer service to take their meal period on an engine.
12/18/97 CRBDAWDS

RULE 34 – cont.

SBA 910 – Award No. 722 – This involved a claim for no lunch which the Board dismissed because the Yardmaster showed on the CT-143 that the claimants were allowed a meal period. See dissent of Labor.
12/22/98 crbdawds

RULE 35 LAST YARD CREW

SBA 910 - Award No. 477 - Gives insight into conducting a study in connection with eliminating the last yard crew.

SBA-910 - Award No. 656 - On June 1, 1991, Carrier intended to abolish yard assignment YSHI-39, the last remaining yard assignment at Hillery Yard, Danville, Illinois pursuant to Rule 35(a) of the Collective Bargaining Agreement. However, Carrier postponed the abolishment of yard assignment YSHI-39 until completion of a joint study pursuant to Rule 35(b) and (c). The study began on July 8, 1991 and ran for ten consecutive days. During the ten day study Carrier annulled yard assignment YSHI-39 for six days. The six days in which yard assignment YSHI-39 was annulled were calculated in the ten day average. The average time consumed in switching was then determined to be less than four hours per day. Carrier therefore abolished YSHI-39, purportedly consistent with Rule 35(b). By letter dated August 2, 1991, however, the Organization claimed discontinuation of yard assignment YSHI-39 was improper because Carrier annulled the assignment on six days during the 10-day study period. Carrier maintained that the yard assignment had properly been discontinued. Claimant, who had been assigned to the Brakeman's position on yard assignment YSHI-39, exercised seniority to the Brakeman's position on Train INPE-PEIN on June 3, 1991, when he became aware of Carrier's intention to abolish yard assignment YSHI-39. Claimant remained on Train INPE-PEIN through July 30, 1991. Beginning July 16, Claimant submitted penalty time cards claiming a day's pay at the yard rate of pay. **DENIED.**
12/18/95 crbdawds

SBA 910 – Award No. 650 – This case involves an alleged temporary abolishment of the last yard crew on the basis that there was not sufficient work over the Christmas Holiday to sustain a yard crew at the level of work prescribed in Rule 35. No study was made. Claim **SUSTAINED** for eight (8) hours each date which included the reduced crew allowance.
12/18/97 crbdawds

RULE 36 - CALLING CREWS - YARD EXTRA LISTS

CRT-10581 - Claims of trainman for lost earnings because he was not called from the supplemental yard list Framingham, MA in violation of Rule 36. SUSTAINED. Allowed payment of one day's pay at the Yard Conductor's rate of pay for March 30, May 17, July 12, and July 20, 1994.
12/20/96 - crbdawds

CRT-11068 – Claim of a Conductor for not being called from the Supplemental Yard Extra Board on his rest days to work vacancies on the same shift. Claimant allowed payment of eight (8) hours under Rule 84.
12/18/97 CRBDAWDS

RULE 38 - COUPLING AIR HOSES

SBA-190 - Award No. 673 - Yard crew changed an Air Hose while a carman was on duty. Claim for one (1) day's pay for performing service that should have been performed by a carman was **DENIED.**
12/18/95 crbdawds

RULE 40 – TRAINMEN USED ON OTHER THAN OWN YARD ASSIGNMENT

CRT-11797 and CRT-11959 – **SUSTAINED**
STATEMENT OF FACTS:

Claimants were assigned in yard service at Linden, NJ during a tour of duty when Claimants were detached from their crew to work with another crew. While working with the other crew, Claimants' crew did not remain idle as required by Rule 40.

EMPLOYEES' POSITION:

The Carrier's only defense is that instructions had been issued by District Superintendent J. J. Garofolo for the crew to remain idle, therefore, the crew should have remained idle. We agree. The problem is that the yardmaster ordered the crew to work. The yardmaster was the crews direct supervisor and to refuse such orders would be construed as an act of insubordination, which is a dismissal offense. Certainly no crew decides what work is to be performed and when it is to be performed. That is for a Supervisor to determine and in the instant case it was the yardmaster on duty.

The issue is quite narrow, i.e., the crew worked by order of the yardmaster while the Claimant was detached from the crew. Rule 40 is quite explicit in this regard;

RULE 40 – cont.

CRT-11797 and CRT-11959 cont.

> "If a yard trainman is used with another crew while the crew to which he was originally assigned did not remain idle, he will be paid an additional day's pay at the yard rate of pay in addition to the earnings of his own assignment."

12/22/98 crbdawds

RULE 41 - YARD CREW ASSIGNMENTS

SBA 910 - Award No. 582 - Furloughed Trainman claimed one (1) day for each date a yard crew worked overtime. **DENIED**

SBA 910 – Award No. 675 – The following is quoted from the award:

> "Although this Board is not unsympathetic to claimant's working conditions, our jurisdiction is extremely limited. The parties' agreement, as confirmed by numerous awards, contemplates *overtime*, and the amount of overtime to be worked is reserved to management, save and except where specific contractual exceptions are expressed. Although claimant's statistical evidence suggests that the recurring overtime problem might disappear with the reinstitution of the abolished shift, we find no authority under the agreement to mandate such a (staffing) remedy.
>
> AWARD: Claim denied."

12/18/97 CRBDAWDS

RULE 42 – CABOOSES-YARD SERVICE

PLB 5916 – Award No. 17 – No place to store gear on the engine. **DENIED.** Filed in Rule 42.

5/4/00

RULE 43 - HUMP CONDUCTOR ASSIGNMENTS

See SBA 910 - Award No. 434

See SBA-910 - Award No. 645 for the following: "The dispute in the instant matter centers on whether the Claimant should receive the RTCA. The record reveals that on the days in question, he was called in to instruct an unqualified trainman on the proper usage of the remote control panel which governed the switch alignments at the West end of the Class and Departure Yards at the Elkhart Hump. As the service performed

SBA 910 – Award No. 645 cont.

was that of a Hump Conductor, the applicable payment would be that of the Hump Conductor assignment, which, according to Rule 43, includes the car retarder operator rate of pay plus reduced train crew allowance. The claim must therefore be **SUSTAINED.**
12/18/95 crbdawds

SBA 910 – Award No. 842 – Conductor Only allowance of $18.00 does not apply to Hump Conductor Assignments.
12/22/98 crbdawds

RULE 45 - SENIORITY

SBA 910 - Award No. 337 - Rule G, Case wherein the carrier contended the claimant was improperly working for Conrail for 4 years as he was dismissed previously. Board ruled this argument could not be entertained. **SUSTAINED**

RULE 47 - ASSIGNMENT

SBA 910 - Award No. 168 - Assignment not promptly advertised. **SUSTAINED in part.**

First Division Award No. 21215 - "The carrier next asserts that it may in effect change the bulletined assignment from day to day, if it does so before the commencement of the day's work. We are of the opinion that to approve such a practice would serve only to destroy the integrity of the bulletin. Therefore we hold that in the specific instances cited in this claim the carrier violated the agreement by changing the bulletined assignment."
12/18/95 crbdawds

RULE 48 - DISPLACEMENT

SBA 910 - Award No. 163 - Carrier refused to accept Optional Displacement. **SUSTAINED**

RULE 51 - FURLOUGH TRAINMEN

SBA 910 - Award No. 510 - **SUSTAINED** on the basis claimant was not properly recalled.

RULE 51 – cont.

SBA 910 - Award No. 72 - Dismissed employee recalled from furlough and worked 2 months. (**DENIED**) Claimant still considered a dismissed employee.

SBA 910 - Award No. 286 - Claimant not properly recalled from furlough. **SUSTAINED.** Good case to refer to in regard to the time limits for submitting such a claim and the information on the time card.

SBA 910 - Award No. 338 - Termination of seniority under Rule 51(f). **SUSTAINED**

SBA 910 - Award No. 426 - **DENIED**. No proof claimant kept Carrier advised of current address.

SBA 910 - Award No. 539 - Recalled trainman does not respond because of his medical condition while the carrier claimed he was medically fit. **SUSTAINED.**

SBA 910 – Award No. 796 – Carrier failed to comply with Rule 51 and recalled junior trainmen. The Board **SUSTAINED** our position in that Rule 51 was violated, but denied all but a few of the claims under Rule 91 as untimely. See dissent of labor, i.e. the 30 day time limit for submitting claims does not begin until the employee returns to active service.
5/4/00

RULE 52 - QUALIFYING CONDUCTORS WHO ARE FORCE ASSIGNED

CRT-7951 - Senior man removed from list to qualify while junior employees who were also not qualified were permitted to work. **SUSTAINED** for one day for each date the claimant lost as a result thereof.

RULE 53 - PROMOTION TO CONDUCTOR

SBA 910 – Award No. 822 – involves the handling of a New York Central Brakeman who relinquished his right to promotion to Conductor.
12/22/98 - crbdawds

RULE 54 - DEADHEADING

CRT-251 - Cut-off enroute between initial and final terminal and deadheaded in combined service back to the initial terminal. Claim **SUSTAINED** for a separate day for the deadheading.

CRT-8496 - On July 9, 1991, the Claimant was assigned in through freight service between Hobson, OH and Columbus, OH. While at his away-from-home terminal, Columbus, OH, the Claimant was advised that he was unable to perform service because of a medical condition discovered on June 17, 1991, during his periodic regular physical examination. The Claimant returned to Hobson, OH without pay. The Claimant was **allowed payment** of one basic day's pay for July 9, 1991 for deadheading from his away-from-home terminal to his home terminal.

CRT-8581 - On July 7, 1991, the Claimants were assigned in through freight service between Harrisburg, PA and the Philadelphia Consolidated Terminal on Train PISC-7, on duty at 3:30 PM. Upon arrival at the final terminal, the Claimants were required to take their train to Edgemoor, DE and deadhead to Philadelphia, PA. The Claimants were **allowed** payment of eight hours for the deadheading separate and apart from service.

CRT-4994 - Involves deadheading from residence to a location other then that protected by the extra list claimant was working. **SUSTAINED** for 1 day deadheading separate and apart from service each way because claimant was not ordered in combined service. Residence was between where claimant normally reports and where he was ordered on the date in question.

SBA 910 - Award No. 368 - **DENIED** - Deals with deadheading an employee from another location when the assignment is allocated to the employees from the distant location.

SBA 910 - Award No. 460 - Reduced Crew Allowance claimed when deadheading. **DENIED**.

SBA 894 - Award No. 1164 - Deals with an employee who contended he was <u>not</u> ordered to combine deadheading with service, therefore, he claimed a separate day. He requested the phone tapes be consulted to verify his claim. The request was made on the timecard and the Carrier failed to comply. **SUSTAINED**.

CRT-7271 - Crew on duty for 45 minutes without performing service and then ordered to deadhead. Claim for one day for the 45 minutes service time. Claim was **SUSTAINED** and the deadheading was paid separate and apart from service.

CRT-8922 - <u>Straight-away</u> through freight assignment cut-off en route, and deadheaded to their initial terminal. Paid service ticket to point where they were cut-off, and separate deadhead day from the point where they were cut-off to the initial terminal. In other words, cut-off and turning back to the initial terminal starts a new day.

SBA 910 - Award No. 671 - Claim **SUSTAINED** on behalf of a pool crew rested at the home terminal when the Carrier used an extra crew out of their away-from-home terminal in service protected by the pool.

SBA-910 - Award No. 667 - Crew ordered to combine service with deadheading and the service never materialized. We argued Rule 54(a) still applied, i.e., miles or hours. **DENIED.** The Board ruled Rule 54(c) applies.
12/18/95 crbdawds

CRT-10644 - Facts: Conductor was called off the extra list to cover through freight assignments.

Employees Position: Conductor was called off the extra list to cover the Sterling to Toledo pool. On his trip north on ENG-504 they left the engines at North Yard and taxied to Sterling. At no time was there a mention of combining deadheading with service.

Corporation Position: Corporation records reveal that Bulletin Number 93-33 dated August 6, 1993, stated the following:

> "The job description of pools operating between Elkhart/Chicago, Detroit/Toledo, Willow Run/Toledo and Fort Wayne/Elkhart includes the following information 'Pools will be called in straightaway or turnaround service and deadheading is combined with service unless otherwise instructed.'"

In view of the above, the claim must remain denied.

After System meeting a letter dated May 8, 1996 stated:

> "Arrangements will be made to allow Claimant one day's pay for deadheading from North Yard to Sterling, MI on July 2, 1994 in full and final settlement of the claim."
12/20/96 crbdawds

SBA 910 - Award No. 740 - Extra list employee on an outpost assignment under Rule 83 goes off duty, and is being held for service the following day. Subsequent to going off duty, the regular assigned employee marks-up for service. The claimant is released to deadhead back to his home terminal. The Carrier combined the deadheading with prior service. We contended that the employee could only be deadheaded separate and apart from service. The Board ruled in part here pertinent:

> "As the Organization notes, continuous time payments operate on the assumption that events occur in succession. Here, the employee went off duty. If he had been placed back on duty one minute later, a new day would have begun. There is no way to restore an employee to duty on the same tour once he has been permitted to tie up. Most certainly, this cannot be done retroactively. Thus, quite simply, there was no service with which Claimant's deadhead could have been combined. If stood by itself and must be compensated appropriately." **SUSTAINED**.
12/20/96 crbdawds

Rule 54 - cont.

SBA 910 – Award No. 821 – To combine deadheading with service requires notification as set forth in the following Q & A:

"Q-3: How is a crew or individual to know whether or not deadheading is combined with service?

"A-3: When deadheading for which called is combined with subsequent service, will be notified when called. *When deadheading is to be combined with prior service, will be notified before being relieved from prior service. If not so notified, deadheading and service cannot be combined."*

NOTE: Effective January 1, 1998 notification no longer required. Deadheading is combined with service automatically if it is cheaper than paying for deadheading separate and apart from service. (See Article II Section D of April 24, 1997 Agreement.)

12/22/98 crbdawds

SBA 910 – Award No. 803 – Involves the question of whether or not the claimant was ordered to combine deadheading with service. He claimed he was not so ordered and he requested on his timecard that the phone tapes be used to verify his claim. On that basis his claim was **SUSTAINED.**

12/22/98 crbdawds

RULE 55 – EXPENSES AWAY FROM HOME

CRT 12215 – Claim **SUSTAINED** for a meal allowance while being held at an away-from-home terminal as part of the process of qualifying.

5/4/00

RULE 56 - HOLIDAYS

SBA 910 - Award No. 250 - Involves working a flagging position during the qualifying period for a holiday pay. Award states that claimant was not in local freight service but road service at through freight rate. Claim for bonus day and time and one half **DENIED**.

SBA 910 - Award No. 252 - Claimants reported for their regular assignment on a holiday at 7:30 AM. They obtained supplies for their cabin car after signing the register sheet. At 8:00 AM they were notified that their assignment was annulled. They applied for 8 hours at the time and one-half rate. Carrier paid 8 hours at the straight-time rate under Rule 66. **SUSTAINED** for 8 hours at the time and one-half rate under Rule 56.

SBA 910 - Award No. 503 - Extra list employee claiming the time and one-half rate for working a Traveling Road Switcher on a holiday. **DENIED**

Rule 56 - cont.

PLB 2570 - Award No. 111 - Claimant worked the day before and after the holiday and was not used on the holiday. However, his assignment worked twice on the day prior to the holiday and he only worked one of the tours of duty. Claim **DENIED** for holiday bonus day.

PLB 1088 - Awards No. 5 and 9 - Involves claims at the time and one-half rate when an assignment was scheduled to report on a holiday and was set-back into the day following the holiday. (**DENIED**)

CRT-7104 - Regular assigned employee performed service on his last work day before going on vacation. Returned from vacation on a scheduled holiday on which his assignment was annulled. Did not mark up on the holiday until 10:00 AM. Claimant worked the day following the holiday. Claim initially denied on the bases the claimant was not available the full calendar day of the holiday. However, the rule only requires a regular assigned employee to work his assignment on a holiday and inasmuch as the claimant's assignment was annulled, the claim was **SUSTAINED**.

PLB 2791 - Award No. 6 - **SUSTAINS** the claim of an Engineer for holiday pay. The question to be answered in determining this claim is whether or not the time spent on vacation is to be included or excluded when determining the qualifying factor set forth in Note 2, Paragraph b), of Section 2 of the Vacation Agreement. The Board finds that the vacation period should be excluded in determining the thirty (30) day period in question. It may be fairly inferred from the agreement that vacation time is not to be used to defeat a claim for holiday pay.

PLB-5157 - Award No. 14 - deals with Holiday availability.
12/18/95 crbdawds

SBA-910 – Award No. 685 – This case involves bridging the holiday. Our claim was **DENIED.**
12/22/98 crbdawds

CRT-12163 – Claim for Holiday Pay on July 4, 1997 was **SUSTAINED.**
March 99

CRT-12324 – The following letter was written in response to the Carrier's letter of denial in regard to holiday pay claimed for December 24 and 25, 1997. After receiving this letter, the Carrier agreed to make payment.

"August 9, 1999

Mr. L. J. Finnegan
Director LR, Conrail -SAA
1000 Howard Blvd. Rm. 420
Mt. Laurel, NJ 08054-2355

Rule 56 - cont.

CRT-12324 – cont.

RE: System Docket CRT- 12324

Dear Sir:

This has reference to the above-captioned case, which you denied by letter dated July 19, 1999, and is currently awaiting adjudication by Special Board of Adjustment No. 910.

On December 23, 1997, the Claimant was a member of the Philadelphia/Camden combination road/yard extra list and he worked in road service on assignment WPMI-61X. At 4:01 PM on December 23, 1997 his status changed to that of the incumbent on assignment WPPA-10, as provided for in Rule 83 (g) of our CBA. He worked said assignment beginning on December 24, 1997, through December 28, 1997. Accordingly, beginning at 4:01 PM on December 23, 1997, the Claimant was a regularly assigned road trainman and as such, he qualified for holiday pay as provided for in Rule 56 of our agreement.

Not retreating from the above, had the Claimant been a member of a combination extra list and had he needed to rely upon Rule 56 (g)(3) to qualify for holiday pay (11 yard starts in the previous 30 days) and should he not have qualified thereunder, in lieu thereof, he would be entitled to two (2) personal days as provided for in our crew consist agreement. (See enclosed Memorandum dated September 28, 1979)

Accordingly, inasmuch as the Claimant would be entitled to two (2) personal days, had he not qualified for holiday pay, it would seem that one (1) way or another the Claimant is owed two (2) days pay. On that basis, I ask that the Claimant be allowed the two (2) days pay he is owed.

Please advise.

Very truly yours,
L. Suozzo
General Chairperson"
5/4/00

SBA 910 – Award No. 924 – Holiday pay **ALLOWED** because the employee would have qualified for same had he not been improperly withheld from service.
5/4/00

RULE 57 - BEREAVEMENT LEAVE

CRT-8761 - states as follows:

> "The Claimant, a regularly assigned yard employee at Ashtabula, OH on assignment YIAS-13 requested payment of three bereavement days for December 4, 5, and 6, 1991. He was allowed payment for December 4 and 6, 1991. Payment for December 5, 1991 was denied on the basis that the Claimant's assignment was annulled for one day pursuant to Rule 66.
>
> "The Claimant requests one day's bereavement pay alleging that the duties of his assignment were fulfilled by Ashtabula yard crew YIAS-12. In addition, the Claimant states that had he been notified of the annulment, he could have displaced to any one of 18 other positions at Ashtabula.
>
> "The Claimant was **allowed one day's bereavement pay** for December 5, 1991."

RULE 59 - ATTENDING COURT, INQUEST OR OTHER LEGAL PROCEEDINGS

SBA 910 - Awards No. 111 and 112 - Reduced crew and productivity allowance as lost earnings when attending court. **SUSTAINED**.

RULE 60 - TIME ALLOWANCES - ATTENDING INVESTIGATIONS

PLB 3584 - Award No. 14 - Loss of earnings to include Productivity and Reduced Crew allowances. **SUSTAINED**.

SBA 910 - Award No. 213 - Claimant was a witness at an investigation. He claimed lost earnings, including reduced crew and productivity allowances plus held time. **SUSTAINED**.

RULE 61 - VACATIONS

CRT-6636 - Claimant assigned a fourth week of vacation prior to his anniversary date. Inasmuch as the claimant was not notified he was entitled to the fourth week prior to taking the fourth week of vacation, the claim for the fourth week was **SUSTAINED**.

PLB 416 - Award No. 6 - Claimant allowed to take vacation when he was not entitled to same. Claim **SUSTAINED** on the basis the claimant was advised by the Carrier that he could have three weeks vacation.

RULE 62 - TRAVEL ALLOWANCE

CRT-11308 - The Claimant was allowed payment of 6.6. auto miles on each of the claim dates since as a prior right employee he was required to travel a greater distance from his home in Lyndhurst, NJ, to a position in Oak Island Yard as opposed to Waverly Yard as a result of the 503-7 North Jersey Terminal Consolidation.
12/20/96 CRbdawds

CRT-11957 – Car mileage allowed for additional distance that had to be traveled to work elsewhere on Conrail because of the sale of Lock Haven to a short line operator.
12/22/98 crbdawds

RULE 63 - BEGINNING AND ENDING OF DAY

SBA 910 - Award No. 385 - Road day ends when yard day begins.

CRT-8832 - Straight-away assignment used in turn service beyond their final terminal paid a new day.

CRT-9882 - Road Service employee paid separately for service performed at the initial terminal of his assignment as follows: Allowed payment of one (1) road day at the Brakeman's rate of pay for the service performed on Train TV-14X beginning at 5:15 am and ending at 6:45 am, and payment for service on Train FRSE-7 at the Conductor's rate of payment beginning at 6:45 am.
12/18/95 crbdawds

SBA-910 - Award No. 719 - This decision sets the record straight in regard to the Carrier's misapplication of Rule 23. Said Rule deals with different classes of Road Service that can be worked during a tour of duty **as part of the same assignment.**

In Award Nos. 661, and 662, of this Board, the Carrier deliberately mislead the Neutral Member of the Board into believing that Rule 23 of the Conrail/UTU Agreement is unique to Conrail, which was proven to be false, as UTU showed in Labor's dissent to Awards 661 and 662. Rule 23 dates back to Board of Arbitration No. 168. On December 3, 1952, Board of Arbitration 168 answered the following questions:

> **"QUESTION NO. 1:** 'Should Any Rule Covering More Than One Class of Road Service Be Granted?'
>
> "The Board finds there is no controversy over this question. All parties to this proceeding now agree, as a matter of record, that there should be a rule."
>
> **"QUESTION NO. 2:** 'What shall be the language of the rule?'

Rule 63 - cont.

SBA-910 - Award No. 719 - cont.

> "Subject to and in keeping with the provisions of Paragraph 4 of the Arbitration Agreement of July 17, 1952, the Board finds that a new rule should be awarded as follows."

The Rule the Board awarded was Rule 23. Stated differently, the Board awarded a Rule in the matter of "More Than One Class of Road Service" which was applied Nationally and adopted by Conrail and the UTU (C&T) as Rule 23 of the Agreement dated September 1, 1981.

The decisions that evolved over the years in connection with the "More Than One Class of Road Service" rule, consistently held that the Rule only has application in instances where a different class of road service is performed in connection with the same assignment. Conrail deceived the Neutral Member of Special Board of Adjustment No. 910 in Awards 661 and 662 into discounting all the precedent that serves to support the aforesaid. Conrail did so by claiming Rule 23 was a different "More Than One Class of Road Service" rule, then that awarded by Arbitration Board No. 168.

In Awards 661 and 662, UTU used Conrail's Rule of the Month, June, 1986, as an Exhibit to verify the fact that Rule 23, and the Award of Arbitration Board No. 168 are one and the same. Said document was issued by Conrail to their Field Officers as guidance in applying Rule 23. As part of that directive, Conrail advised as follows:

"However, before the digest is listed, it should be pointed out that the original rule written in 1952 by Board of Arbitration No. 168 is the same rule as those found in our agreements today. The only difference being the paragraph numbers and letters."

In the instant case, the UTU left nothing to chance. UTU admitted the Award of Arbitration Board No. 168 in its entirety. That lead the Neutral Member of the Board to recognized that the Claimant had not been involved in working "More Than One Class of Road Service" within the same assignment. What was involved, is an employee who was assigned to work from Conway, PA to West Brownsville, PA on Train XWB-46. Enroute, the Carrier terminated that assignment at Thomson, PA, an intermediate point between Conway, PA and West Brownsville, PA. Claimant was then used on a second assignment, Train UWT-40, Thomson, PA to Conway, PA. Inasmuch as it was shown that Rule 23 had no application, what remained was to apply Rule 4 which reads in part pertinent:

RULE 4 - Basic Day and Overtime Road Freight Service

> "(a) In road freight service, 100 miles or less, 8 hours or less (**straightaway** or turnaround) **will constitute a day's work.**

Rule 63 - cont.

SBA-910 - Award No. 719 - cont.

> **"NOTE:** The 100 mile day has been increased in Through Freight Service as set forth in the Agreement of June 28, 1985 and February 18, 1992, however, the increase in basic day miles has no bearing on the instant case."

The Carrier limits their dissent to Rule 25, as if that was the only Rule upon which the Organization had relied, which is false. We cited Rules 4, 15, 25 and 63 as controlling. Moreover, the decision made it abundantly clear that the findings in favor of the employees was based on the following:

> "The Board is not persuaded that Rule 23 contemplates this situation, and the Board concludes that Claimant is entitled to additional compensation for his service on September 19 and 20, 1993."

12/20/96 crbdawds

SBA 910 – Award No. 810 – This case is being entered herein should the Carrier use the decision as a basis for denying the claim for a new day for departing a final terminal after arriving with a train. This case was **DENIED** on the basis that there was no showing that the route used constituted a move into and then out of the Chicago Terminal. In other words, it came down to the physical characteristics of the railroad being the determining factor.

12/22/98 crbdawds

RULE 64 - MARKING UP FOR DUTY

PLB 4700 - Award No. 6 - Claimant attempted to mark up from being off sick. Held out of service pending physician's statement. **SUSTAINED** for lost earnings.

RULE 66 - ANNULMENT OF ASSIGNMENTS

CRT-5641 - Claimant's wife notified of annulment prior to 8 hours. Claimant subsequently notified less than 8 hours before reporting time. Claim **SUSTAINED** for one days pay for not being notified at least 8 hours prior to reporting time.

SBA 910 - Award No. 218 - Not properly notified of annulment.

SBA 910 - Award No. 433 - Four attempts to notify claimant of annulment were unsuccessful. Claimant reported for assignment as advertised. Claim **SUSTAINED** for 8 hours.

CRT-5203 - Not notified of annulment **SUSTAINED**.

Rule 66 - cont.

CRT-9049 - States the following:

> "It is understood that yard assignments will not be annulled solely to permit road crews to perform service which may be performed when no yard crews are on duty. However, any work which may be performed by road crews without payment of penalty compensation while yards crews are on duty may be performed by road crews when yard assignments have been annulled."

SBA-910 - Award No. 655 - On the date of claim, April 1, 1991, claimants were assigned as the conductor and brakeman on yard assignment YSAN-31 with a work time between 4:00 pm and 12:00 midnight at South Anderson, IN. Claimants were timely notified that their assignments were annulled for one day, April 1, 1991. While claimants positions were laid in, Traveling Road Switcher WSAN did work at Phillips from 4:10 pm to 4:30 pm, switched six cars from Track No. 3 to Track No. 9 at South Anderson and classified the west bounds. On April 4, 1991, claimants submitted a penalty time card claiming a penalty yard day's pay which was **SUSTAINED.**
12/18/95 crbdawds

RULE 67 - SERVICES OTHER THAN REGULAR DUTIES

SBA 910 - Award No. 327 - Claim for Conductor's rates **SUSTAINED** for a conductor used as a brakeman. Also see SBA 910 - Awards No. 453, 454, and 455.

SBA-910 - Award No. 653 - Claim of T. A. Obleman for earnings of B. D. Quarantello (assignment WOR203) on October 29, 1991.

Opinion of the Board:

> On a day previous to the claim date, Claimant was determined to be unavailable for testing pursuant to Section VII paragraph B of carrier's Federal Railroad Administration (FRA) approved Random Drug Testing Plan. Pursuant to the Plan, his name was placed in a residual testing pool and he became subject to drug testing within the following 90 day period.
>
> Claimant was notified to report for drug testing at 9:00 am on October 29, 1991. On that day he was assigned to the Clearfield, PA Trainmen's Extra List. He marked off the extra list with permission at 2:46 am and marked back up on the extra list at 10:45 am on the same date after providing a urine sample. Claimant was subsequently called from the extra list at 11:45 pm on that same date to report at Clearfield, PA as the Brakemen on through freight assignment COA-2X. Claimant was allowed one hour and 45 minutes pay at the through freight Brakeman's rate of pay from the time of his appointment for drug testing, 9:00 am, to the time he marked back up on the extra list, 10:45 am, pursuant to the

SBA-910 - Award No. 653 - cont.

> provisions of Rule 95(c). On October 30, 1991, Claimant submitted a penalty time slip requesting payment of the earnings of Trainman B.D. Quarantello who was called from the Altoona Trainmen's Extra List for Work Train WOR-203 at 9:10 am on October 29, 1991.
>
> The Board recognizes that the Organization has cited precedent standing for the proposition that Rule 67 is here applicable. Financial loss incurred by Claimant as a result of providing the federally mandated urine sample is, however, at most speculative. The assignment to which Claimant was eventually called on the claim date did compensate him better than the compensation earned by Quarantello on the same date. While the Board understands the ripple effect of assignments for an individual on the extra list, a rule of reason must be applied in each case of this type so as to prevent an employee from being unduly enriched. Under the totality of circumstances here present, it must be found that Claimant was adequately compensated. **DENIED.**

12/18/95 crbdawds

SBA-910 – Award No. 777 – Claimants were the incumbents on a pool assignment that protected service between Shire Oaks/Conway, Shire Oaks/Conemaugh and Shire Oaks/Southern Limits of West Brownsville. They were used partly between advertised limits but mostly beyond the working limits of their pool. They filed for time consumed beyond the limits of the pool under Rule 8(c). Carrier argued Claimants' status was that of an extra crew and that they became an extra crew because the Carrier had removed them from their assignment under Rule 67. The Board ruled on the matter in part here pertinent:

> "Rules 8(c) and 67 both provide a method for computing compensation under certain circumstances. If Claimants were in pool service and required to operate beyond the advertised limits of their pool assignment, Rule 8(c) would dictate how they would be paid. If, on the other hand, Claimants were taken from the pool and placed in other service, Rule 67 would govern their compensation. We do not read Rule 67 as giving Carrier the right to move employees from their assignments to perform other work. Rather, it merely sets the employees' compensation when Carrier exercises its right to move them. That right must be found elsewhere in the Agreement.
>
> Carrier has cited no Rule of the Agreement, other than Rule 67, that would give it the right to take Claimants out of pool service and put them on the job they worked. There are provisions for covering such work from the extra board, and there are provisions setting forth how vacancies are to be filled when the extra

SBA-910 – Award No. 777 – cont.

> board is exhausted. It is evident Carrier did not comply with these provisions when it moved Claimants. Therefore, we must conclude they were not taken out of the pool. It follows, then, that Claimants must be compensated in accordance with Rule 8(c)."

12/18/97 crbdawds

SBA 910 – Award No. 703 – The Claimant is asking to be compensated the amount he would have earned if he had worked his regular assignment for the thirteen days in question, less the one day" pay he did receive for each date.

The Organization argued that the Claimant must be "made whole" pursuant to Rule 67(a) which reads, in pertinent part, as follows:

> Trainmen taken from their regular pool or assignment to perform any service other than that covered by their regular pool or assignment, ..., will, for each day so used, be paid the rate and under the overtime conditions of the service performed, with not less than the earnings of their regular pool crew or assignment.

The Organization cited to several Awards from this Board upholding the "make whole" provision of this Rule. The Carrier argued that there was a change in policy, effective February 1, 1993, which negated the application of this Rule to this situation[1] and, further, that the Claimant had been informed of this change. In response, the Organization argues that the effective rules of the agreement must be applied as written and the Carrier cannot change a rule without bargaining, even if the employee agrees. The Organization cites to numerous Awards in support of this contention.

A review of the record reveals that the Claimant was aware, or should have been aware, of the change in policy regarding "make whole" payments for the voluntary service he performed under "Project Lifesaver." As he chose to work more than two days in February, he is not entitled to more than the two days of "make whole" payments plus a basic day's pay for each of the remainder of the days worked. Although the Organization argued that the Carrier unilaterally altered Rule 67(a) of the Agreement, the record does not support such a finding. Rule 67(a) deals with pay for

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[1] The Claimant participated in the combined Labor-Management Program known as "Operation Lifesaver" which involved, among other things, visiting schools to inform the children about the dangers of playing near railroads and to promote public safety. Prior to February 1, 1993, the volunteer employees were "made whole" for time served, pursuant to Rule 67(a). Effective February 1, 1993, the Carrier implemented a revised "Labor Management System Policy for Participation and Pay." This policy, among other things, limited "make whole" earnings to two days per month, with any additional days during a month compensated at a basic day's pay.

Rule 67 - cont.

SBA-910 - Award No. 703 - cont.

the trainmen who are "taken" from their regular assignments. The February 1, 1993 revised "Labor Management System Policy for Participation and Pay" specifies changes for "make whole" pay for "voluntary" assignments. If the Claimant had been assigned by the Carrier to do such work, he would have been entitled to be "made whole" for all days worked. As he was not, he is not entitled to more than he has already received.
12/18/97 crbdawds

SBA 910 – Award No. 841 – See award for the following:

"On August 26, 1995, Claimant was assigned as a conductor in Pool Crew UT06. At 9:15 pm on that date, Claimant was called to work as a conductor in Pool Crew UT04, and he declined. Thereafter, he was not permitted to work in his own crew at 9:20 pm because he had refused the call for the other pool. The Organization, consequently, now seeks the compensation Claimant would have earned had he worked his regular assignment. The Organization insists Claimant should not have been called for Pool Crew UT04 unless the Carrier had exhausted all of its alternatives under Rule 28. Therefore, reasons the Organization, Claimant had a right to decline the work without jeopardizing his own assignment.....

"The Organization has failed to establish that Carrier was not privileged to call Claimant for service as a conductor in Pool Crew UT04 in lieu of his working his assignment in Pool Crew UT06. First, it has not demonstrated that there were other employees available who should have been used instead of Claimant. While the Organization asks the Board to assume this to be the case simply because of the numbers of employees involved, more than an assumption is required before we will sustain a claim. Secondly, it is evident Claimant was set up to a pool crew to protect a vacancy pursuant to Rule 67. In this case, there is no evidence of a local agreement prohibiting moving an employee up to another pool crew, as mentioned in Rule 67. In this regard, this case is distinguished from Award No. 777 of this Board in that the Claimant therein was used in road switcher service and not in another pool crew. The Agreement was not violated in this case.

"AWARD: Claim **DENIED**."
12/22/98 crbdawds

RULE 68 - INTERCHANGE

SBA 910 - Award No. 478 - Joint Facility (Shomo Yard) N&W and Conrail. Claim **SUSTAINED** for setting over to another track even though there were no yard crews on duty on the basis interchange rule was violated.

Rule 68 – cont.

CRT-9363 - Involves a claim that was subsequent to the Agreement of February 18, 1992 for setting off on more then the minimum number of tracks which is not permissible when interchanging. Also see CRT-9356, CRT-9396, CRT-9394, CRT-9388, CRT-9397, CRT-9522, and CRT-9533.

SBA-910 - Award No. 637 - Claim **SUSTAINED** for one (1) day's pay because the Carrier violated Rule 68 when they required a Conrail crew to interchange cars between the "NS" and "CSXT" railroads.
12/18/95 crbdawds

CRT-11505 – Claimant was in run-through service Columbus to Cincinnati, Ohio and reported for duty at the Carrier's Buckeye Yard, Columbus, Ohio.

In each instance, Claimant was required to operate the over-the-road train from Columbus to the Carrier's Sharon Yard (which locates at Claimants' final terminal), make a set-out of cars and a pick-up of cars at Sharon Yard, and thereafter deliver the entire train (including those cars picked up at the final terminal) in interchange to the CXST's Queensgate Yard at Cincinnati, Ohio. Claim **SUSTAINED** for eight (8) hours.
12/18/97 crbdawds

SBA 910 – Award 828 – yarding train on more than the minimum number of tracks when making an interchange. **DENIED** on the basis that the Organization failed to establish that the train could have fit on less than the number of tracks that were used.
12/22/98 crbdawds

SBA 910 – Award No. 806 – UTU argued that Rule 68 was applicable and the Board ruled otherwise.
12/22/98 crbdawds

See First Division Award No. 16743.
5/4/00

RULE 69 - PILOTS

SBA 910 - Award No. 461 - Road Freight rate for piloting a passenger train. **SUSTAINED**.

PLB-2227 - Award No. 7 - Cannot combine work service with Pilot service.
12/18/95 crbdawds

RULE 73 - WORK EQUITY AGREEMENTS

SBA 910 - Award No. 476 - Claim **SUSTAINED** for lost earnings for the Carrier's error in allowing a Local Chairman to pick an assignment on the Order Selection List which was selected out of sequence with the step procedures in the Through Freight Road Consolidation Agreement.

RULE 74 - FLAGGING SERVICE

CRT-11293 – Other than a train service employee used to provide flag protection for train movements. **SUSTAINED** for 8 hours.
12/22/98 crbdawds

RULE 75 - WORK AND WRECK TRAIN SERVICE

CRT-8707 - On October 15, 1991, the Claimants were assigned in work train service on Train WOR-202 on duty at the Harrisburg Consolidated Terminal at 5:00 AM. At 12:35 PM, while working at Wall in Lebanon, PA, the Claimants were instructed by Harrisburg East Dispatcher Liesey to relieve the crew on Train XAN-15 on No. 2 Main at Wall, set the train to No. 4 Storage Track at the Water Plug and take the locomotive consist to the Cornwall Industrial Track. The work was completed at 12:45 PM.

The Claimants were **allowed payment of a penalty yard day** for the service performed on October 15, 1991. Service was performed within switching limits where yard crews were on duty, i.e., Harrisburg Consolidated Terminal.

RULE 84 - MISHANDLING

SBA 910 - Award No. 212 - Claimants stood second out in the pool when carrier used crews standing third and fourth out for service. Carrier paid the claim of the crew first out. Board **SUSTAINED** the claim of crew standing second out.

SBA 910 - Award No. 213, CRT-3375 - Claimant paid for Reduced Crew Allowance and Productivity Savings Allowance and held time as part of lost earnings when not called to perform service with his assigned pool crew.

SBA 910 - Award No. 404 - Claimant's pool crew used prior to being rested. Claim **SUSTAINED** for a day in each direction. The Board would have sustained the claim for lost earnings had the claimant identified the employee who worked the crew.

SBA 910 - Award No. 424 - Road crew used out of final terminal to relieve another road assignment. Claim **SUSTAINED** for 1 day for the extra list employees who stood to perform the service.

Rule 84 - cont.

SBA 910 - Award No. 492 - Brakeman claimed being mishandled for not being used as a hostler. **DENIED**. Carrier used reserve engine service employee and M of E employees.

CRT-7532 - On the date of the claim, January 5, 1991, the Claimants were the train crew called to report at 6:00 AM at Conway, PA and operate Train XSF-1 in through freight service to Enola, PA. Upon reporting for duty, the Claimants took charge of their power at the engine house and proceeded to No. 5 Yard, Track No. 904, where they coupled to their train. Subsequent to completing the road air brake test on their assigned train, XSF-1, they were instructed that their assignment was being changed to Train TV-12. They boarded Train TV-12 at East Conway and departed on their road trip. Carrier argued Rule 84 (d) in an attempt to pay for both assignments on a continuous time basis. Claim **SUSTAINED** for a separate day for initial assignment because service was performed.

PLB 2570 - Award No. 130 - Crew in through freight service from Harrisburg to Newberry relieved at Northumberland by Newberry crew. Claim under Rule 84 for Northumberland crew. **SUSTAINED**.

CRT-10208 - Claim **SUSTAINED** for eight (8) hours for the extra list employee who stood first out when a crew called in Short Turnaround Service was used beyond the 25 mile limit.
12/18/95 crbdawds

SBA 910 - Award No. 671 - Claim **SUSTAINED** on behalf of a pool crew rested at the home terminal when the Carrier used an extra crew out of their away-from-home terminal in service protected by the pool.
12/18/95 crbdawds

CRT-9973 - Claim of conductor for earnings of round trip on FRSE-1 on May 28, 1993, when he was not called in his regular turn.

The claimant was assigned as a conductor on one of three Framingham/Selkirk assigned service runs. On May 28, 1993, he was first out and available for call when conductor DeLoreto was ordered from the Worcester pool located at Worcester, MA to report at Framingham MA at 5:00 am to work as the conductor on Train FRSE-8 destined to Selkirk. The claimant submitted a timecard requesting payment of the earnings of the conductor that worked Train FRSE-8. Claim was denied.

The claimant was allowed $324.56, the earnings of conductor DeLoreto for May 28, 1993.
12/18/95 crbdawds

Rule 84 - cont.

SBA 910 – Award No. 649 – Claimants on duty 8:00 AM for a Work Train, Assignment WOR-302. Thereafter, they operated light engines to a point 22 miles from their on duty point. Upon arrival at 10:00 AM, Claimants were informed that they would thereafter be used in relief service on Traveling Road Switcher WAFR-90. Claimants performed service as directed and completed their tour of duty at 7:15 PM.

Each Claimant submitted two separate time slips. The first time slip covered their service beginning at 8:00 AM and ending at 10:00 AM. The second time slip claimed a separate day's pay beginning at 10:00 AM and ending at 7:15 PM. **SUSTAINED.**
12/18/97 crbdawds

CRT-11068 – Claim of a Conductor for not being called from the Supplemental Yard Extra Board on his rest days to work vacancies on the same shift. Claimant allowed payment of eight (8) hours under Rule 84.
12/18/97 CRBDAWDS

SBA 910 – Award No. 840 – Claimant was placed on the bottom of the list when he should have been placed first out. He claimed multiple mishandled claims. The Carrier had offered to pay one (1) claim for eight (8) hours. The Board **SUSTAINED** our position and paid four (4) separate eight (8) hour claims.
12/22/98 crbdawds

RULE 89 - ESTABLISHING TERMINALS

SBA 910 – Award No. 812 – Shire Oaks established as a terminal effective September 20, 1994. All assignments at Thomson Yard were moved to Shire Oaks, except WITH-5 which was moved to Shire Oaks on September 5, 1995. We took the position that the 12 month car mileage allowance under Rule 89 (A) (3) applied for 12 months beginning September 5, 1995 to those individuals assigned to WITH-5, which became assignment WISO-5 at Shire Oaks. The Board denied our claim on the basis the allowance in question ceased to be applicable as of one (1) year from September 20, 1994.
12/18/97 crbdawds

RULE 90 - CONSOLIDATING EXTRA LISTS AND POOLS

SBA-910 - Award No. 543 - The Board ruled it is permissible to combine a yard list with a road list under Rule 90.
12/18/95 - crbdawds

RULE 91 - TIME LIMIT ON CLAIMS AND PROCEDURES FOR HANDLING

CRT-7499 - Wherein we took the following position which was **SUSTAINED**:

> "Claimants receive their paychecks by mail and in the pay period in which the denial was issued claimants had no checks coming. Consequently, the denial statement was not mailed, therefore, it was not received within 80 days. Apparently the denial statement went to the pay location at Enola, however, inasmuch as the practice is to mail the denial statement along with the pay checks, the Carrier should have mailed the denial statement even though the claimants had no pay check coming.
>
> "There was no merit to the instant case as the claimants merely exchanged power of their own train which is permissible."

SBA 910 - Award No. 136 - Claim procedurally defective as claimants failed to comply with Rule 91(c).

SBA 910 - Award No. 414 - Claimant improperly force assigned - **Sustained in part**, however, the portion of the case involving Dec. 9, 1987 through Jan. 12, 1989 was denied on the basis the claim was submitted on Jan. 25, 1989 beyond the 30 day time limit starting on Dec. 9, 1987.

SBA-910 - Award No. 654 - Time limits for filing a claim in connection with the request of Trainman R. A. Steele for lump sum payments in the amounts of $2,000.00 and $10,000.00. Board ruled such a claim is subject to the time limit provisions of Rule 91.
12/18/95 crbdawds

CRT-11058 - Claim **SUSTAINED** for 8 hours in regard to the following:

> Claimants were used contrary to Rule 11, i.e., they made two (2) trips out of Conway, the second of which was beyond 25 miles and when combined with the first trip, the total miles run was in excess of 100 miles. The Carrier based its denial on insufficient information on the timecard.

We took the position that the information on the service ticket was complete and we argued that if the Carrier needed more information all they had to do was consult the service ticket. Apparently, that was what was done to handle the case as a Joint Submission inasmuch as the Joint Statement of Facts contains all the pertinent information.
12/20/96 crbdawds

CRT-10785 - Claim paid, then Company recovered payment without denying the claim within 80 days. **SUSTAINED** under Rule 91(e).
12/20/96 crbdawds

Rule 91 - cont.

SBA 910 – Award No. 755 – From the documentation of record it appears that the Local Chairman indicated Document E-169925 as the September 10, 1994, penalty time slip for Claimant. A review of the document indicates that it does not specifically contain a claim for eight hours pay. However, we find such procedural claim to unduly emphasize *form* over *substance*. The carrier as the movant for summary dismissal, has not preponderantly proven that the documentation and time claims submitted in this appeal were less than substantial compliance with the requirement of Rule 91, or that it was prejudiced in understanding, evaluating and preparing a defense to such claim. Ergo, the Carrier's Motion for summary dismissal on this procedural point must fail for want of sufficient proof.
12/18/97 - crbdawds

SBA 910 – Award No. 782 – Statement of Claim:

> Conductor claiming one (1) day's pay (8 hours) for being required to perform service on April 23, 1994 in violation of Rule 31, Question and Answer No. 7 of the Agreement effective September 1, 1981, between the United Transportation Union (C&T) and the Consolidated Rail Corporation, Conrail, as amended.

On date of claim, Claimant was called to service to take XWB-98 from Altoona to Conemaugh and deadhead back to Altoona. When the crew arrived to begin work, however, they were instructed that their assignment had been changed. Instead, they were to operate a lite engine assignment from Altoona to Conemaugh, exchange engines and return. On their return trip, the crew was directed to act as a helper on the head-end of MAIL-4 from MO to Altoona. The Organization asserts Claimant, being in engine change service, should not have been required to also perform helper service.

In support of its position, the Organization cites Question and Answer No. 7 to Rule 31, which reads as follows:

Q. What may be required of a yard trainman called to perform engine change service?

A. As part of his tour of duty a trainman on an engine change assignment may be required to perform any or all of the following work in connection with the movement of engines coupled in multiple and/or not coupled in multiple:

(1) Move engines between any points within a terminal.
(2) Deliver and/or pick up engines within a terminal.
(3) Deliver and/or pick up engines to outlying terminals.
(4) Couple engines to train including air hose coupling.
(5) Move rolling stock blocking engine(s) to be picked up, delivered or exchanged.

Rule 91 - cont.

SBA 910 – Award No. 782 – cont.

Furthermore, the Organization notes that Question and Answer No. 10 to Rule 31 states engine change assignments are not permitted to perform work other than as outlined in Q&A No. 7. The Organization additionally cites a September 21, 1994, letter from J. F. Glass, Senior Director-Labor Relations, to General Chairperson C. D. Winebrenner, reading as follows:

> This refers to your letter dated August 22, 1994 concerning Productivity Trust Fund payments when engine exchange crews perform general yard service. Henceforth, when engine exchange crews are used to perform revenue service or other work not enumerated in Q&A No. 7 to Rule 31 and a penalty payment is allowed, a contribution of $48.25 will be made to the appropriate Trust Fund Account provided the Trainman makes the proper claim on his or her timecard. Also, this will generate payment of Conductor-only allowance and a Reduced Crew Allowance to eligible employees.

The Carrier first argues the claim is procedurally defective. It asserts the original penalty time slip requested payment because of the second change of service on the tour of duty. It also notes the Claimant did not cite the Rule under which the claim was made, as required by Rule 91.

The Board issued the following decision in this case:

> "Our review of the record shows that the claim is not in compliance with Rule 91(c) in that the Rule under which the claim is made was not cited on the time slip. Carrier raised this defense during the handling of the dispute on the property, as evidenced by Mr. Glass' letter of January 12, 1996. By the precedent set in Awards Nos. 136 and 540 of this Board, we must dismiss the claim."

12/18/97 crbdawds

SBA 910 – Award No. 691 – In support of its argument that the Claimant's claim is procedurally defective, the Employer notes that the Claimant submitted his claim well beyond the thirty-day limit. Further, the Employer observes that the Claimant did not provide sufficient information to the Carrier on which to identify the basis for his claim, e.g., the name of any employee who worked in his place, the notation of any assignment on which he could have worked, or the amount of compensation he believed he was entitled to receive. The Claimant additionally violated Rule 91 by submitting a penalty timeslip with no date stamp, and failing to submit a timeslip for each date of claim. . . . . .

Rule 91 - cont.

SBA 910 – Award No. 691 – cont.

Regarding the procedural argument posited by the Employer, this Referee notes that in cases where the delay in filing a claim is not substantial, arbitrators are very reluctant to dismiss the claim and may take considerable pains to construe the agreement in favor of timely filing. Fairweather, Practice and Procedure In Labor Arbitration, Schoonhoven, ed., BNA 3rd Ed. (1991). Also, under the theory of estoppel, arbitrators will not hold a grievance untimely if a management representative's conduct makes it unjust or unreasonable to do so. Id. For example, if the delay in filing was occasioned by a management representative's offer to settle the as yet unfiled grievance, then the employer will be estopped from raising the contractual limitations period as a bar. Dunlop Tire Corp., 88 LA 262

In the instant claim, the Claimant's delay in filing was not substantial, and the Union offered sufficient evidence indicating that the Employer had previously made a settlement offer to the Claimant. Thus, the Employer cannot now raise the issue of untimeliness to bar his claim.

Regarding the Employer's contention that the claim was not timely progressed through the Joint Submission/Ex Parte Submission process prior to its appeal to the final appeal officer, this Referee observes that the parties' conduct may also operate to estop or waive any timeliness arguments. Blue Creek Mining Co., 88 LA 730 (Eyraud, 1987). As the parties to the instant claim referred it up to the Senior Director-Labor Relations, the highest Carrier Officer designated to handle such disputes on the property, their mutual conduct acted as a waiver of the requirement of the Joint Submission/Ex Parte Submission process prior to such referral.

The Claimant clearly should have been more diligent in filing his claim. However, for the foregoing reasons, this Referee finds the instant claim to have been timely filed.
12/18/97 crbdawds

SBA 910 – Award 138 – Referee Robert E. Peterson. The following is quoted from the Award:

> "The Carrier asserts that Claimant had failed to comply with Items 4, 7, and 8 of Rule 91(c), supra, in that he did not furnish when he attended the first Book of Rules class in 1985, upon whose orders he attend the Book of Rules class on February 8, 1985, and under what rule the claim is being made. ....
>
> Since the Carrier was unable to document the manner in which its objections had been developed or handled on the property this Board has no alternative but to hold the Carrier request for the claim to be dismissed as invalid to be without

SBA 910 – Award No. 138 – cont.

> appropriate support of record. Furthermore, we think it apparent that the Carrier was fully cognizant of the extent of the claim, as is evidenced from a reading of the Joint Statement of Agreed-Upon Facts as executed by both parties on July 16, 1985 during the on property handling of the dispute."

12/18/97 crbdawds

See SBA 910 – Award No. 694 for the following:

> "Regarding the procedural argument posited by the Employer, this Referee notes that in cases where the grievant continues to suffer from the alleged contract violation, the arbitrator may find that the violation is a continuing one. Fairweather, Practice and Procedure In Labor Arbitration, Schoonhoven, ed., BNA 3rd Ed. (1991). In such a case, the limitations period recommences each day; hence, the time for filing the grievance is extended. Id.
>
> Due to the ongoing nature of the harm alleged by the Claimants in the instant matter, this Referee finds the alleged wrongdoing by the Employer to be of the continuing violation variety. Hence, the Claimants' claims cannot be barred on the issue of timeliness."

12/18/97 crbdawds

SBA 910 – Award No. 860
STATEMENT OF FACTS: Claimant sustained a personal injury during his tour of duty on May 31, 1994. After receiving extensive treatment claimant was medically approved for return to service and actually marked up for duty on February 20, 1995. The following day (February 21, 1995) claimant reported for yard assignment YPMV-30 at 3:00 PM at Midvale Yard, Philadelphia, PA; however, approximately two hours later (5:00 AM) he marked off duty, contending that he was unable to continue to perform service due to the recurrence of pain from his previous injury.

Subsequently, claimant sued and settled a case against the carrier under the Federal Employers' Liability Act (FELA) for the injury he had sustained on May 31, 1994.....

Notwithstanding such settlement, in April, 1996, claimant presented a *time slip* demanding compensation for the two hours he had worked on the previous February 21, 1995. The initial claim was denied; the carrier explained, *inter alia,* that such claim was not timely submitted pursuant to the provisions of Rule 91, and that it was also barred by the above described *general release.* Thereafter the unsettled claim was progressed to the Manager-Labor Relations, who also denied the claim in a letter dated April 11, 1997.

Rule 91 - cont.

SBA 910 – Award No. 860 – cont.

A review of the undisputed evidence and the applicable (cited) contract provisions compel a denial of this claim as untimely. Although the organization argues that such rule of limitation is not applied uniformly (*i.e. carrier's recovery of wage overpayment)*, we are not authorized or disposed to amend the parties' agreement by *arbitral fiat.* Furthermore, we would not parenthetically that there appears to be a substantive difference between a *disputed claim for compensation* and *administrative errors (overpayment/shortages)* in previous wage payments.

Based on our sustaining decisions concerning the claimed procedural impropriety, it is not necessary (*moot*) that we address and resolve the carrier's alternative defenses of waiver/estoppel/incomplete appeals records, etc.

AWARD: Claim **DENIED."**
12/22/98 crbdawds

SBA 910 – Award No. 796 – Carrier failed to comply with Rule 51 and recalled junior trainmen. The Board **SUSTAINED** our position in that Rule 51 was violated, but denied all but a few of the claims under Rule 91 as untimely. See dissent of labor, i.e. the 30 day time limit for submitting claims does not begin until the employee returns to active service.
5/4/00

CRT-12374 – Claims of various Conductors and/or utility brakepersons for two hours pay on each date and document listed account of an alleged Violation of Award of Arbitration Board 419.

The Carrier initially denied payment by letter dated July 19, 1999, which is quoted below in part pertinent, but finally made payment as requested prior to this case being adjudicated by SBA 910.

> "The claims in dispute request that the employees named thereon are paid a two-hour penalty account allegedly being required to shove their train in excess of one mile while riding the side of the car. At least that is what the appeal of the Local Chairperson states. One could not determine that information when reading the appeal submitted at the initial level. The claims as submitted are so devoid of any claim detail that to handle them in any other manner than to deny them would disregard the basis of our Rule 91.
>
> I disagree with your argument and your position that Award 920, of SBA 910 supports payment of these claims. The fact remains that the employee failed to comply with Rule 91 when submitting the claim and the claims are therefore invalid.

CRT-12374 – cont.

In view of the foregoing and the position of the Manager – Labor Relations in the Ex-Parte submission, which be mention is made part of this response, the claims as submitted are procedurally defective and remain denied.

Yours truly,
/s/ L. J. Finnegan
Director-Labor Relations"

5/4/00

SBA 910 – Award No. 920 – See Award for the following:

"The Carrier first asserts the claim should be procedurally barred because Claimant, in submitting his time slip, failed to identify the rule supporting the claim. Carrier cites Rule 91(c), which provides as follows:

> In order for a claim to be considered, the individual who files the claim, either the claimant or his duly accredited representative must furnish sufficient information on the time slip to identify the basis of claims, such as but not limited to:
>
> 1. Name, occupation, employee number, division.
> 2. Train symbol or job number.
> 3. On and off duty time.
> 4. Date and time of day work was performed.
> 5. Location and details of work performed for which claim is filed.
> 6. Upon whose orders work was performed.
> 7. Description of instructions issued to have work performed.
> 8. Claims being made, including rule under which claimed and reason supporting claims.

The record shows the Carrier is correct that the original claim did not identify the rule number under which the claim was made. In fact, Claimant noted he did not have a copy of the Agreement and was unable to quote the pertinent rule. Nevertheless, we do not agree that this failure bars the claim. Rule 91 requires the claimant or the representative to 'furnish sufficient information.... to identify the basis' of the claim. The rule does not require that each of the eight enumerated items be included on each time slip. By referring to information 'such as but not limited to' the eight items, the rule clearly is setting out examples of the type of information that the Carrier requires for the proper handling of the claim. In this case, the Carrier has made no assertion that it was unable to construe the basis for the claim despite Claimant's failure to cite a specific rule

number. In Award Nos. 136 and 540, cited by the Carrier, the claimants omitted substantially more information than the rule number. Among other information missing form their claims, they did not describe the work performed that gave rise to the claim, as well as upon whose orders the work was performed. Such omissions would make it impossible for the Carrier to evaluate the merits of their claims."

5/4/00

RULE 93 - DISCIPLINE AND INVESTIGATION

PUBLIC LAW BOARD NO. 2570

PLB 2570 - Award No. 167 - 30 days suspension - failure to properly obtain permission to occupy the Popes Creek Secondary. Under questioning claimant stated that neither he nor any other member of his crew tried to obtain a Form D from the Conrail Dispatcher. **DENIED**

PLB 2570 - Award No. 168 - 10 day deferred suspension - failure to notify Train ENES-4 of the severity of flat spots witnessed by you which resulted in damage to car PS 1597 and four (4) broken rails. Board stressed not necessary to call Engineer because claimant admitted negligence in not reporting, and Road Foreman's testimony was not hearsay since he stated that the claimant himself told him. **DENIED**

PLB 2570 - Award No. 169 - 30 days suspension - falsification of service time slip where claimant recorded an on-duty time of 2:29 PM when called for on-duty time of 2:30 PM in order to claim overtime. **SUSTAINED.** Board found the issue herein created a situation where it was difficult to make a judgment, however it felt that the Trainmaster did make improper statements regarding the discharge of claimant. Such statements indicate there may have been prejudgment and further indicates that pressure might be applied to one employee not to give testimony which would reflect upon the decision of the Carrier. Board found discipline assessed was unjust and ordered Carrier to pay for all time lost.

PLB 2570 - Award No. 170 - 17 days actual suspension - failure to protect shoving movement resulting in derailment and damage to bumping block. Board found evidence was questionable as to who was at fault. It is difficult to believe that claimant would give engineer one-fourth length of time at the exact same time locomotive struck the bumping block. **SUSTAINED** with lost time paid for time out of service.

PLB 2570 - Award No. 171 - 5 days suspension - Charged with delay of train. Claimant was unhappy with engineer because engineer kept the radio too loud. **DENIED.**

RULE 93 – cont.

PLB 2570 - Award No. 172 - 13 days suspension - Refused to take train as directed by Trainmaster and Terminal Superintendent which caused delay to movement of train. **DENIED.** Board finds

> "These cases have been difficult ones in which to make a determination since in some instances testimony in one case reveals evidence which might impact upon another case. However, such evidence cannot be considered by the Board. Only the testimony in the investigation of each individual case may be considered in that case."

SPECIAL BOARD OF ADJUSTMENT NO. 910

SBA 910 - Award No. 532 - Failure to comply with Conrail Drug Testing Policy. Neutral refused to accept any of Organization's arguments regarding challenge of trial notice not being received by claimant. **DENIED**

SBA 910 - Award No. 533 - Reporting for duty under the influence of alcoholic beverage or intoxicants - Referee relied on past discipline "This is the third incident in which claimant has been charged with a Rule G violation. In Award 377, SBA 910, the Board returned claimant to service without pay for time lost and predicated the consequences should claimant again be brought up and convicted of a Rule G violation by stating: 'The violation is of course a serious one and calls for strong disciplinary action, a long suspension without pay and a warning that another Rule G violation, even of a minor nature, will mean dismissal.' Although we are not commissioned to rubber-stamp a prophesied result, we are satisfied claimant had vigorous and fair warning should he relapse." **DENIED**

SBA 910 - Award No. 490 - Carrier admitted documents of critical importance to their case into evidence without stipulation of the parties or testimony by a qualified witness. In the absence of such a witness the Board concluded that a trainman with fifteen years service and a good record should be reinstated without back pay, and required to undergo unannounced drug testing for a period of three years. **SUSTAINED.**

SBA 910 - Award No. 541 - Dismissal for placing cement in 4 switches which resulted in delay to crews. Findings: Claimant's action presented a clear and imminent danger to the lives of his fellow crew members and the community. Delays resulted, clear risk of damage to Carrier's property. Nothing in record to support assertion that claimant was suffering from alcoholism and depression at time of incident, or that he has sought treatment for same. **DENIED**

SBA 910 - Award No. 542 - Rule G - tested positive as a result of an FRA mandatory post accident drug testing incident. **DENIED** because of time limits when appeal was not filed within the 15 day time limit.

RULE 93 – cont.

SBA 910 - Award No. 543 - Rule 98(j) termination. Claimant absented himself from service for more than 30 days without a written, authorized leave of absence. **DENIED**

SBA 910 - Award No. 545 - Rule G - failure to comply with Conrail Drug Testing Policy as instructed in two letters. Findings: claimant admitted that he had "unknowingly" used cocaine. Claimant introduced documentary evidence to establish the fact that his former wife placed cocaine in his drink, unbeknownst to him. Claimant did not intentionally use cocaine. Board reduced discipline to a suspension without back pay if claimant successfully completes a drug screen test and subject to drug testing in accordance with the terms and for the time period required by Conrail Drug Policy.

SBA 910 - Award No. 553 - Appeal 10 dismissals for missing calls for a total of 23 missed calls this year which is an excessive amount. Claimant said that military service was the cause of much of the problem. He was given time to provide information regarding the claim. **DENIED** In the instant case had claimant provided the documents proving his active duty with the military the Neutral would have reinstated claimant.

SBA 910 - Award No. 554 - Unauthorized activity while on duty (removal of pair of gloves from Georgia Pacific Corporation) **DENIED** The NORAC Operating Rules are precise and prohibit the actions taken by Claimant.

SBA 910 - Award No. 555 - Falsification of employees' register sheet when accepted a call and was not properly rested under the Federal Hours of Service Act to perform service. **DENIED** No change because was dismissed under Award No. 554.

SBA 910 - Award No. 564 - Rule G - **DENIED** Board stated the Carrier's drug testing policy is a reasonable exercise of managerial discretion that was uniformly applied. The drug policy is clear and direct and put the claimant on notice that the use of illegal drugs was prohibited on and off the job. Within a five month period, the claimant tested positive for cannabinoids on a second occasion and was advised, in writing, after the last positive test that a subsequent positive test could result in his dismissal.

SBA 910 - Award No. 565 - Claimant was on furlough status since 1982. By certified letter, dated June 17, 1987, he was recalled to service. Letter was returned to Carrier with notation that delivery had been attempted and the addressee was unknown. Carrier unsuccessfully attempted to obtain the claimant's current address from the General Chairman. Consequently, claimant's name was removed from District "E" roster of trainmen. **SUSTAINED** It was established that claimant kept in contact with Carrier through-out furlough and Carrier at least for payroll purposes was aware of claimant's new address. It was not established that claimant provided at the furloughed location his address as required by Rule 51(b).

Rule 93 - cont.

SBA 910 - Award No. 570 - Occupied track without permission. Dismissal reduced to more than 30 days. Board ruled that a 10 day suspension suited the infraction and claimant should be made whole for all losses sustained, and Carrier credited with any income received by claimant in lieu of wages or as wages received elsewhere during his period of absence.

SBA 910 - Award No. 571 - Possession, sale and unlawful delivery of marijuana in Conrail parking lot which resulted in arrest as reported in local newspaper. **DENIED** Dismissed - claimant had full notice of time and place of investigatory hearing.

SBA 910 - Award No. 572 - Rule 98(j) - Failure to return to work after vacation and no contact with the Company since that time. The Board found no evidence to mitigate the severity of the penalty. **DENIED**

SBA 910 - Award No. 576 - Rule G - tested positive for prohibited drugs. Claimant had a previous conviction wherein he was returned to work on a leniency basis with the understanding that if subsequent screenings disclose the use of controlled substances that Carrier had the right to automatically reinstate the discipline of dismissal. **DENIED**

SBA 910 - Award No. 583 - Rule 98(j) - Claimant absented himself from work for more than 30 days and that the self-executing provisions of Rule 98(j) apply. **DENIED.**

SBA 910 - Award No. 606 - Failure to comply with Conrail Drug Testing Policy. The record indicated the Claimant did attempt to utilize the services but he did not always comply with the counselor's suggestions. Board can not offer leniency - that power is reserved for Carrier.

SBA 910 - Award No. 607 - Rule 98(j) - absenteeism while attending to an illness in family. Findings: There is no evidence in the record to support claim that the inconvenience caused by a sick family member required his absence from work without permission. Claimant had been employed by Conrail for approximately one year, during which he had been disciplined under Rule 93 on two occasions. The charges were absenteeism and he was given a reprimand on each charge. **DENIED.**

SBA 910 - Award No. 608 - Insubordination in that claimant failed to comply with instructions of Conrail Medical Director to report for evaluation. Claimant did not appear because his attorney did not feel it was necessary. His attorney was not advised of Conrail's position until after the fact. While ignorance of contract is no excuse, the foregoing does illustrate that actions of claimant were not dictated by a viewpoint of insubordination. Board reinstated claimant to his former status without back pay or benefits but with seniority unimpaired. Within 30 days claimants was instructed to

submit to a physical examination in order for Conrail Medical Director to determine fitness to return to duty. Claimant is required to authorize his doctor to furnish his medical history and documents within same 30 days if Medical Director believes them necessary for an accurate evaluation of his condition. **SUSTAINED as set forth.**

SBA 910 - Award No. 612 - Collision - Dismissal - Claimant's train collided with a stopped train causing derailment and damage to both trains as well as injuries to crew members. (Claimant was subsequently restored to service and discipline modified to a 6 month suspension. Claimant had a collective responsibility which dictated a more sanguine and active role in the handling of train. Board found his seat placement and unfamiliarity with the road as mitigating circumstances, consequently a three month disciplinary suspension is warranted and would modify discipline because the Agreement was violated.

SBA 910 - Award No. 613 - Dismissal - Drugs - failed to refrain from use of prohibited drugs as evidenced by urine sample. Claimant was entitled to an explanation from the MRO and/or an opportunity to apprise the MRO of any prescriptions he might have taken that would conceivably affect the positive result. Said explanation was denied until such time that tainted the record. Claimant was restored to service without pay or benefits but with seniority unimpaired and must submit to Conrail Drug Policy and must undergo periodic screening in conformity with that policy.

SBA 910 - Award No. 629 - Dismissal - Collision - Involvement in the operation of train which collided with another train. Board agreed that claimant was responsible for the safe movement of train and he must bear his portion of the responsibility for the collision, however, the dismissal on this charge alone constituted excessive discipline under all circumstances. Claimant was a long service employee with no prior discipline of record and the Engineer was ultimately reinstated. There is another case in which claimant was dismissed that is a related charge. Claimant to be reinstated rather than dismissed on this charge. However implementation of this award must wait and be subject to the final outcome of the other separate but related charge. If that other claim is denied, this award will be null and void.

SBA 910 - Award No. 630 - Insubordination - Dismissal - Insubordinate to Trainmaster by having refused to accompany Trainmaster to receive medical attention for a personal injury; abandoned assignment, and refused to answer questions or comply with instructions regarding completion of reports related to injury. Board found claimant to have been overly defensive but it was not established that claimant was intentionally insubordinate to Division Superintendent who did not immediately identify himself to claimant who was at home and reportedly in pain. Board is convinced that claimant's misconduct warranted substantial discipline, but dismissal is excessive discipline. Claimant returned to duty without back pay or benefits but with seniority unimpaired.

Rule 93 - cont.

SBA 910 - Award No. 631 - Dismissal - Claimant failed to refrain from use of prohibited drugs. **DENIED** Board found claimant to show serious misconduct and dismissal is not excessive.

SBA 910 - Award No. 632 - Rule 98 - Improper termination of seniority. Union's awards swayed Referee in light of the unique facts of this case and in consideration of Claimant's clean work record over 16 years and his willingness to return to work, he deserves one more chance to retain his employment with Carrier in the interest of due process. In light of findings but also considering reason for absence, claimant's claim is sustained in part, denied in part. Employer ordered to reinstate claimant upon release from incarceration, without back pay or benefits, and with seniority unimpaired.

SBA 910 - Award No. 634 - Drug - Dismissal - failure to comply with Conrail Drug Testing Policy as evidenced by a positive urine sample provided. Carrier possessed and submitted all necessary material evidence to prove claimant used cocaine during the period in question. **DENIED.**

RULE G – OTHER BOARDS

SBA 235, Award No. 32 - Sustained - Drug case - Transcript notably lacking of any specific information whatsoever concerning the triggering incident which led to Carrier's determination that there was probable cause to test claimant. Also problem with the chain of custody. Filed in Rule 93.

SBA 18, Decision No. 5922 - Provides insight into witnesses not being present and developing facts at the investigation not subsequent thereto. Filed in Rule 93.

PLB 4354, Award No. 8 - filed in Rule 15, AF-325 Amtrak Off-Corridor. See following Language:

> It is our view that even in revising Rule G the Carrier must have intended that the finding of 'off duty use' was for the purpose of demonstrating that very recent drug use could have impaired the employee's capacity to perform on the job. To view the 'off duty' use more broadly would put the Carrier in the position of dictating the social morals of its employees.
>
> In summary, in this case since the Claimant requested a blood test and it was administered, the test should have been analyzed for Cannabinoids to determine whether at any time over the recent past the Claimant had used marijuana. Failure to provide this test at least raises questions with respect to whether the use of marijuana as indicated by the urine test took place either on duty or off duty a relatively short time before the incident in question arose. Under these circumstances we feel the claim should be sustained.

Rule 93 - cont.

First Division - Award No. 24052 - Claimant refused drug test in connection with reasonable cause testing. Board ruled carrier possessed reasonable cause to test claimant, but dismissal was excessive.

Canada

Canadian National Railway Vs UTU, Filed in AF-325

Drugs, PLB 4291, Award No. 5 - Denied but includes language which states that an employee returned to duty and tested without reasonable cause should he have been subjected to be randomly tested a second time unless claimant engaged in suspicious behavior. See page 10 of filed CR-210G.

SBA 235, Award No. 46 - Sustained with back pay because conflicting evidence in the form of two (2) contradictory drug test results and claimant was returned to work by his supervisor on the day of the occurrence. Filed in Rule 93.

First Division - Award No. 24156 - Drug case. Sustained with back pay because prior to the trial the Organization requested nanograms of cocaine allegedly present in the claimants system and the presence of the Medical Review Officer. The Carrier failed to comply. Filed in Rule 93

Circular No. 21-92 for a very long where the Claimant was reinstated after allegedly testing positive for drugs.
Filed AN-325.

PLB 416, Award No. 6 - Filed in Rule 61 - Claimant allowed to take vacation when he was not entitled to same. Claim Sustained on the basis the claimant was not advised of his rights, and further alleged by the Organization that the claimant was advised that he could have three weeks vacation by the Carrier. See Interpretation attached.

PLB 4571 - Awards 3 and 4, - Involves testing for drugs and alcohol. Both **SUSTAINED**. Very informative as to complying with FRA Regulations. Testing Procedures, etc.

PLB 4775, Award No. 5B-7B-8B and PLB 4430, Award No. 289 - Drug cases which deal with not making blood test results available at the trial, passive inhalation, reasonable cause testing includes a blood test if requested and carrier official should advise the employee of his right to a blood test. Also urine test positive, blood test negative, breath test given a second time too soon after the first test. Filed in Rule 25 – On-corridor.

Rule 93 - cont.

PLB 4874 - Award No. 19 - Claim **SUSTAINED** for lost time for being held out of service pending the results of a drug test that was administered in connection with a return to duty physical examination.

Other Rule G s, First Division 20865, 20546, 19964, 19451, 16411, 16466, 16446, 20597, 13142, 20059, 20709, also PLE 589, Awards 43 and 44.

First Division - Award No. 19995 - Rule G (Medical Exam)

First Division - Award No. 20002 - Alcohol on breath

First Division - Award No. 20078 - Alcoholic beverage

First Division - Award No. 20775 - Use of intoxicants when not on duty.

PLB 192, Award No. 3

PLB 4651, Awards 1 and 10. Drug cases where the carrier failed to comply with FRA regulations in regard to the chain of custody and testing procedures. Sustained. (See file CR-210G)

WITNESSES

PLB 5150 – Award No. 4 – Charges dismissed because witness against the claimant was the son of the hearing officer. Hearing officer should have been excused. Filed in Rule 93.

First Division - Award No. 30676 (See Labor's dissent)

First Division - Award No. 8260 - Referee Robert G. Simmons
Regarding the Carrier's obligation to produce evidence that tends to explain, justify or deny the charges. Evidence both for and against the accused. The itself is based primarily on the fact the Carrier failed to produce witnesses directly involved but instead produced Carrier official to testify as to what happen. Award No. is on all fours with the fact the Carrier has an obligation to produce witnesses not the Claimant.

First Division - Awards 9921, and 17269 - Only one witness against the accused. Carrier has not made their case. (Sustained)

PLB 3516, Award No. 76, SD-142D - Witness failed to appear Statement used instead. Sustained.

Rule 93 - cont.

PLB 4975, Award No. 17 and PLB 4227, Award No. 29, Telephone testimony of a witness set aside the discipline because it denied the accused due process. Filed AN-325

Award No. 20085 - Hearsay evidence probative value presumption past record.

First Division - Awards 13576, 13577, and 14987, - Denied right of confrontation.

STOP SIGNAL

PLB 3004, Award No. 5 - Conductor not responsible for actions of brakeman. (Sustained)

PLB 2455, Award No. 21 - Claimant removed from service prior to investigation because of his conduct when handed investigation notice. (Sustained)

PLB 1656, Award No. 8 - Engineman removed from service prior to trial for speeding, running by car marker and deliberately putting his train in emergency. Claim sustained because these were not major offenses therefore claimant should not have been withheld from service prior to the trial.

PLB 1656, Award No. 73 - Similar to PLB 1656, Award No. 8 except charges are different. This case involves a collision. Again the Board sustained the claim on the basis that it was not a major offense, therefore, removal from service prior to the trial was a violation of the agreement.

SBA 589 - Award No. 71, - Claimant coupled to cars which ran away because the coupling did not take and the Carrier had not been properly secured. (Sustained)

PLB 1281, Award No. 117 - Bringing discredit upon the company.

SBA 928, Award No. 12 - Claimant called for service and line was busy-charged with Rule T (Sustained) Carrier was required to make a second attempt to contact the claimant.

PLB 4571, Awards 3 and 4 - Involves testing for drugs and alcohol. Both sustained. Very informative as to complying with FRA Regulations. Testing Procedures, etc.

TD-936, PLB 589, Award No. 41 - W- Board held recessing trial was tantamount to not granting appellant a fair and impartial trial.

TD-1114 Discredit involving Bar room brawl (sustained)

Rule 93 - cont.

COLLISIONS

SBA 589 - Award No. 71, - Claimant coupled to cars which ran away because the coupling did not take and the Carrier had not been properly secured. (**SUSTAINED**)

SBA 894 - Award No. 1130 - Collision speeding dismissal reinstated without back pay personal file.

PLB 5441 – Award No. 66 – boxcar shoved through a shop door. **SUSTAINED.** Filed – Rule 93 Conrail.
5/4/00

SPEEDING

PLB 5122 - Award No. 3 - The analysis of the pulse tape printout was not corroborated by a documented printout that was made off the pulse tape from the Locomotive Unit. Therefore, we conclude that penalty was excessive. Filed in Rule 93.

MISSING CALLS

SBA 928 - Award No. 12 - Claimant called for service and line was busy-charged with Rule T (**SUSTAINED**) Carrier was required to make a second attempt to contact the claimant. Filed in Rule 12 Amtrak and Rules 13 and 36 Conrail.

PLB-5916 – Award No. 28 – Missing call. **SUSTAINED.**
5/4/00

INJURY/ACCIDENT PRONE

SBA-910 - Award No. 665 - **SUSTAINED**
12/18/95 crbdawds

PLB 5441 – Award No. 68 – Injury reported three (3) days after the injury occurred. **SUSTAINED.** Filed – Rule 93 Conrail
5/4/00

ESTOPPEL

SBA-910 - Award No. 664

> "The Board is persuaded from the record evidence that Claimant took the position in court that the injuries he sustained on his job on October 2, 1988

SBA-910 - Award No. 664 – cont.

rendered him permanently disabled from returning to work. Had Claimant presented himself for work only a short time after the jury returned its verdict in the Carrier's favor, Claimant may well have been found to be returned to employment. Here, however, it appears that Claimant presented himself for work well over a year after the jury verdict and only after he had completed a rehabilitation program. The fact that Claimant subsequently passed a physical examination and was qualified by the Carrier for service, and that Claimant actually then marked up and performed regular service for the Carrier for a time prior to being removed from service for the judicial estoppel argument, cannot reasonably be ignored even though this fact, standing alone, may not alter the effect of estoppel. It is also noted that the Carrier had evidently taken the position in court that Claimant was not permanently disabled from work on the railroad.

"On the total record, and in consideration of all the equities in this case, the Board concludes that Claimant is not estopped from returning to work. The claim will therefore be **SUSTAINED.**"

12/18/95 crbdawds

RULE 95 - EXAMINATIONS

PLB 4874 - Award No. 33 - Provides insight into dealing with a case which involves a failure to pass a Book of Rules Class.

SBA 910 - Award No. 138 - **DENIED** payment for second Book of Rules Class after failing initial class. The award also includes insight into procedural arguments regarding Rule 91 (c) and Book of Rules Examinations in general.

SBA-910 - Award No. 653 - Claim of T. A. Obleman for earnings of B. D. Quarantello (assignment WOR203) on October 29, 1991.

Opinion of the Board:

On a day previous to the claim date, Claimant was determined to be unavailable for testing pursuant to Section VII paragraph B of carrier's Federal Railroad Administration (FRA) approved Random Drug Testing Plan. Pursuant to the Plan, his name was placed in a residual testing pool and he became subject to drug testing within the following 90 day period.

Claimant was notified to report for drug testing at 9:00 am on October 29, 1991. On that day he was assigned to the Clearfield, PA Trainmen's Extra List. He marked off the extra list with permission at 2:46 am and marked back up on the

Rule 95 - cont.

SBA-910 - Award No. 653 – cont.

extra list at 10:45 am on the same date after providing a urine sample. Claimant was subsequently called from the extra list at 11:45 pm on that same date to report at Clearfield, PA as the Brakemen on through freight assignment COA-2X. Claimant was allowed one hour and 45 minutes pay at the through freight Brakeman's rate of pay from the time of his appointment for drug testing, 9:00 am, to the time he marked back up on the extra list, 10:45 am, pursuant to the provisions of Rule 95(c). On October 30, 1991, Claimant submitted a penalty time slip requesting payment of the earnings of Trainman B.D. Quarantello who was called from the Altoona Trainmen's Extra List for Work Train WOR-203 at 9:10 am on October 29, 1991.

The Board recognizes that the Organization has cited precedent standing for the proposition that Rule 67 is here applicable. Financial loss incurred by Claimant as a result of providing the federally mandated urine sample is, however, at most speculative. The assignment to which Claimant was eventually called on the claim date did compensate him better than the compensation earned by Quarantello on the same date. While the Board understands the ripple effect of assignments for an individual on the extra list, a rule of reason must be applied in each case of this type so as to prevent an employee from being unduly enriched. Under the totality of circumstances here present, it must be found that Claimant was adequately compensated. **DENIED**.
12/18/95 crbdawds

CRT-10255 - One (1) hour and 30 minutes for reporting for a rules class that had been canceled.
12/18/95 crbdawds

SBA-910 - Award No. 666 - deals with failure to comply with instructions to attend a Book of Rules class.
12/18/95 crbdawds

CRT-11894 – Employee required to attend Rules class and Safety class on two (2) succeeding dates at other than his home terminal, is paid continuous time beginning and ending at his home terminal each date, and auto mileage for the miles in excess of those he would travel, had he reported at his home terminal.
12/22/98 crbdawds

SBA 910 – Award No. 813 – Payment claimed for a second hearing examination to confirm the findings of the first examination. DENIED.
12/22/98 CRBDAWDS

RULE 96 - PHYSICAL DISQUALIFICATION

SBA 910 - Award No. 209 - Carrier refused to grant injured employee (after recovery) a physical exam for return to duty on the basis the claimant testified in court in an FELA case that he was unable to return to work, i.e. totally disabled. Claim **SUSTAINED**. Must be given physical exam.

SBA 910 - Award No. 225 - Deals with an employee being diagnosed as having Multiple Sclerosis by both his personal doctor and the company doctor. Requested a neutral doctor and Carrier declined on the basis there was no dispute between the doctors as to the diagnosis (**SUSTAINED**) Carrier to comply with Rule 96.

SBA 910 - Award No. 380 - Deals with using medical disqualification as discipline which is contrary to Rule 93. **SUSTAINED**.

SBA 910 - Award No. 444 - Claimant withheld from service for medical reasons even though his doctor said he was able to work. **DENIED**.

CRT-8496 - On July 9, 1991, the Claimant was assigned in through freight service between Hobson, OH and Columbus, OH. While at his away-from-home terminal, Columbus, OH, the Claimant was advised that he was unable to perform service because of a medical condition discovered on June 17, 1991, during his periodic regular physical examination. The Claimant returned to Hobson, OH without pay. The Claimant was allowed payment of one basic day's pay for July 9, 1991 for deadheading from his away from home terminal to his home terminal.

PLB-5323 - Award No. 56 - withheld from service pending the results of a drug test administered in connection with a return to duty physical examination.
12/18/95 crbdawds

PLB 4874 - Award No. 19 - Employee withheld from service pending the results of a drug test is paid for time lost.
12/20/96 crbdawds

SBA 910 - Award No. 622 - A furloughed employee is prohibited from returning to duty until the results of the drug test administered in connection with a return to duty physical are made known to Conrail by the laboratory. In denying the request for lost time, the Neutral wrote the following:

> The test of *reasonableness* necessarily involves a subjective evaluation of the relevant facts and circumstances. However, there is nothing in the evidentiary record before this Board that raises a presumption that the carrier's drug screening program, and concurrent reliance on outside testing facilities, is so antiquated and avoidably slow (seven day) as to make it unreasonable per se. It

RULE 96 – cont.

SBA 910 - Award No. 622 – cont.

> is not this Board's duty or prerogative to dictate the systems that a carrier must utilize to determine the physical fitness of a returning furloughee; our responsibility is to measure the proven circumstances by the standards expressed or implied in the parties' collective bargaining agreement.
>
> "Based on the circumstances of record we are persuaded that the delay in claimant's return to active service was neither unreasonable nor the result of actionable neglect." 12/20/96 crbdawds

SBA 910 – Award No. 799.
12/22/98 crbdawds

RULE 98 - LEAVE OF ABSENCE

SBA 910 - Award No. 301 - Held out of service because not qualified on Book of Rules and subsequently terminated under Rule 98(j). **SUSTAINED** without back pay on the basis the Claimant **DID NOT** freely elect to be absent therefore Rule 98(j) would not be applicable.

SBA 910 - Award No. 323 - Rule 98(j) Case **SUSTAINED** without back pay.

SBA 910 - Award No. 335 - Force assigned to conductor's list. Off qualifying and terminated. (**SUSTAINED**.)

SBA 910 - Award No. 446 - Claimant returned to duty medically by his doctor but fails to mark up for service. Terminated under Rule 98 J. **DENIED**.

SBA 910 - Award No. 736 - Carrier asserts this Rule is self-executing and was properly applied in Claimant's case because he had performed no service since February 13, 1995. The Organization argues the Rule did not apply in Claimant's case because he worked on March 23, 1995. It submits he took a qualifying trip on Assignment YPOI-51, and offers his time slip and qualifying verification sheet as evidence. Claimant was not compensated for this trip, and the Organization does not argue he should have been. Apparently, Claimant had exercised his seniority to the joint Conductor-Brakeman extra list. Because he was not qualified as a conductor, he would have had to qualify on his own time, although he could have worked as a brakeman while qualifying.

We cannot find that Carrier acted improperly in terminating Claimant's seniority. There is no indication any Carrier official was aware Claimant had taken a qualifying trip. Additionally, this trip was not considered as service for pay purposes. Nevertheless, we find that mitigating factors must be considered in this case. The intent of Rule 98(j) is to

RULE 98 – cont.

SBA 910 - Award No. 736 – cont.

allow Carrier to terminate the seniority of employees who obviously have no interest in working. Claimant, during the period of his absence, took some action to enable him to expand his employment opportunities on the extra list. Under these circumstances, we think it is appropriate to reinstate Claimant to service without loss of seniority, but without compensation for time lost.

Claim **SUSTAINED** in accordance with above Findings.
12/20/96 crbdawds

RULE 103 - LOCAL AGREEMENTS

CRT-1634 - Local agreements not approved by the General Chairman, and Senior Director Labor Relations are invalid.

SBA 910 - Awards No. 389, 390 - Oral agreements.

RULE 106 - EQUIPMENT ON ENGINES

CRT-8430 - Claimants **allowed** payment of one penalty day because the locomotive units they used did not comply with Rule 106.

CRT-11431 and CRT-10360 – One day's pay sustained for working with foreign locomotives not equipped in accordance with Rule 106.
12/18/97 crbdawds

RULE 107 - SELF-PROPELLED MACHINES

SBA 910 - Case No. 221, CRT-3150 - Burro crane operating in road territory on 401 authority without a conductor. **DENIED**

SBA 910 – Award No. 617 – deals with a Burro Crane working in a confined area within a yard. **DENIED.**
12/18/97 crbdawds

ARBITRATION BOARD No. 419

SBA 910 - Award No. 378 - Claim sustained for 2 hours for handling a marker from the property of a foreign carrier back to Conrail.

ARBITRATION BOARD No. 419 – cont.

SBA 910 - Award No. 421 - Multiple penalties **SUSTAINED** for shoving in excess of a mile during the same tour of duty on more than one occasion. Also see CRT 6769.

SBA 910 - Award No. 489 - Handling a marker in a yard within a consolidated terminal when car inspectors were on duty at another yard within the same consolidated terminal. Claim **DENIED**.

SBA 910 - Award No. 496 - Handling marker on foreign carrier while their car inspector was on duty. **SUSTAINED** for 2 hours. Also see SBA 910 - Award No. 497.

CRT-5736 - Car inspector on duty performing other service at the time the crew handled a marker. **SUSTAINED**

PLB-5487 - Award No. 6 - **SUSTAINING** award for a yard crew required to remove or apply rear-end devices on trains arriving or departing Salt Lake City. (Filed CR-228B)
12/18/95 crbdawds

CRT-10001 - Carrier initially denied claim for shoving over one (1) mile on the basis the crew should have runaround the cars. The Senior Director **SUSTAINED** the claims.
12/18/95 crbdawds

CRT-11292 – CRT-11295 – CRT-11257 – CRT-11260 – CRT-11255 – each case involved a claim for shoving in excess of one (1) mile in the process of shoving cars at a mine to position them for loading. All these cases were **SUSTAINED**.
12/18/97 crbdawds

SBA 910 – Award No. 678 – Statement of Facts: On February 21, 1993, Claimants were assigned to Train UJH-35, reporting at West Brownsville at 5:30 PM. After reporting they were instructed by the Yardmaster to deliver their train, consisting of 172 cars, to the P&LE Interchange at Thomson. Upon arrival at MP 13.2 on Track No. 1, claimants were instructed to cut their engine away, run around their train via the Kenny Industrial Track, and then shove the cars over the Hall Industrial Track to the CP Beck industry, a distance of approximately four miles.

The Claimants complied with such directive and then submitted their service time slip on February 23, 1993, which included a claim for two hours' pay for being required to shove their train a distance greater than one mile without a caboose. The employees cite the Award of Arbitration Board No. 419 in support of their claim.

The claim was denied and thereafter properly processed to this Board for final resolution.

There appears to be no dispute that the reverse move required claimants to ride on the side of cars for a distance that exceeded one (1) mile. However, the pivotal issue in this dispute inquires whether or not the elimination of the caboose *was the reason* the claimants were required to ride the rear of the train in excess of one (1) mile.

Arbitration Board No. 419 - cont.

SBA 910 – Award No. 678 – cont.

The carrier's position is as reflected in their letter of May 3, 1994, reading in pertinent part as follows:

> "The absence of a caboose while shoving cars in this particular circumstances does not warrant payment of the requested compensation. Even if the Claimants had a caboose assigned to them, the shoving of cars over the distance involved would have required that a crew member ride the side of the last car as the caboose would have been located next to the engine after running around their train."

Conversely, the organization contends that had the assignment been furnished a caboose it would have relieved the crew of being required to ride the rear car of the train for the four (4) mile reverse move from Track No. 1 to the Hall Industrial Track to CP Beck. Avowedly the assignment in question has historically made the same extended shoves between the same working limits prior to the rendering of Award 419; the only difference was that on previous occasions the crew was allegedly safely encapsulated in a caboose while they performed the required service.

The historical facts and reasonable alternatives regarding this particular assignment is in question. Although the organization avows that in the past such assignment has been performed with the *crew encapsulated in the caboose*, such fact is disputed by the carrier and there is no credible evidence of record to corroborate the organization's allegations. Furthermore, the maneuvers necessary to hypothetically place a caboose on the head end of such movement is credibly disputed by the carrier as being reasonable or realistic.

Although we are reluctant to have a decision turn exclusively on the placement of the burden of proof, we are faced with disputed facts and equally credible allegations regarding actual historical movements. Under such circumstances we are mandated by the principles of procedure and contract construction to deny these claims.
12/18/97 crbdawds

SBA 910 – Award No. 701 – Yard crew required to remove a read end marking device from a road crew's train, before coupling to the train for switching and classification purposes. Claim filed for a two (2) hour penalty under the Award of Arbitration Board No. 419. The claim was denied on the basis that Letter No. 15 of the February 18, 1992 Agreement allows for such service.
12/18/97 crbdawds

SBA 910 – Award No. 676 – A two (2) hour claim filed under the Award of Arbitration Board No. 419 (Elimination of Cabooses) was denied on the basis it was not applicable to the following:

> STATEMENT OF CLAIM: Claim for two (2) hours on April 30, 1993.

Arbitration Board No. 419 - cont.

SBA 910 – Award No. 676 – cont.

> STATEMENT OF FACTS: On April 30, 1993, Claimants were working a local freight assignment which operated between Clearfield and Strawberry Ridge, PA. At an intermediate point (CP-Drury) located at MP 165.6 on the Buffalo Line, Claimants' train was instructed to stop and pick up a rear end protective device from Engine No. CR5521. The marker was then transported to Arch Street, located at MP 217.5 in South Williamsport, where it subsequently was placed in a waiting taxicab and transported for use by another crew at another location. Thereafter Claimants continued their trip to Strawberry Ridge, PA.
>
> As a result of such interim assignment Claimants submitted a penalty time slip, claiming two hours' pay for handling a *marker* not pertaining to their train. In support of such claim we were cited to Article VIII, Sections 1 and 3 of the October 31, 1985 National Agreement and the Award of Arbitration Board No. 419. The claim was timely denied and thereafter properly processed to this Board for final resolution. (The Board **DENIED** the claim on the basis that the award of arbitration Board No. 419 was not applicable to this case.)

NOTE: In the future, such a case should be handled as a Scope rule violation i.e., service beyond that which accrues to the craft of trainmen. The claim should be for one (1) day's pay.
12/18/97 crbdawds

SBA 910 – Award No. 849 – In order to make a double at the initial terminal, the claimant had to remove an "End of Train Device" to make the coupling. We argued that claimant could only be required to attach or remove the device at the rear of his train under Letter No. 15. Claim **DENIED.**
12/22/98 crbdawds

CRT-12374 – Claims of various Conductors and/or utility brakepersons for two hours pay on each date and document listed account of an alleged Violation of Award of Arbitration Board 419.

The Carrier initially denied payment by letter dated July 19, 1999, which is quoted below in part pertinent, but finally made payment as requested prior to this case being adjudicated by SBA 910.

> "The claims in dispute request that the employees named thereon are paid a two-hour penalty account allegedly being required to shove their train in excess of one mile while riding the side of the car. At least that is what the appeal of the Local Chairperson states. One could not determine that information when reading the appeal submitted at the initial level. The claims as submitted are so devoid of any claim detail that to handle them in any other manner than to deny them would disregard the basis of our Rule 91.

CRT-12374 – cont.

I disagree with your argument and your position that Award 920, of SBA 910 supports payment of these claims. The fact remains that the employee failed to comply with Rule 91 when submitting the claim and the claims are therefore invalid.

In view of the foregoing and the position of the Manager – Labor Relations in the Ex-Parte submission, which be mention is made part of this response, the claims as submitted are procedurally defective and remain denied.

Yours truly,
/s/ L. J. Finnegan
Director-Labor Relations"

5/4/00

SBA 910 – Award No. 932 – Reverse move over one (1) mile is interrupted (stopped) to allow more cars to be picked-up on the head end. The Board ruled against the Organization on the basis that to qualify as a shove over one (1) mile, it had to be one (1) continuous move.
5/4/00

ARTICLE IX SECTION 2 OF THE JUNE 28, 1985 AGREEMENT

SBA 910 - Award No. 234 - Road crew performing incidental work for another road crew at a location where no yard crews were on duty. (**SUSTAINED**)

SBA-190 - Award No. 673 - Yard crew changed an Air Hose while a carman was on duty. Claim for one (1) day's pay for performing service that should have been performed by a carman was **DENIED.**
12/18/95 crbdawds

SBA 910 – Award No. 756 – Attaching a ground line to a draft of cars after the cars are set-off constitutes service beyond that which can be required under Article IX Section 2 of the June 28, 1985 Agreement. However, in lieu of the eight (8) hour penalty claim filed in connection therewith, the Referee awarded a thirty (30) minute penalty.
12/18/97 – crbdawds

The thirty (30) minute penalty allowed by this award has become the accepted penalty for the violation involved. See CRT-12098, CRT-12066 and CRT-12064.
March 1999

Article IX Section 2 Of The June 28, 1985 Agreement – cont.

SBA-910 – Award No. 864 (attaching a ground air line to cars set-off). This award flies in the face of Award No. 756 because it treats the same service differently only because the attaching of a ground air line took place at an intermediate point enroute. See labor's dissent.
March 1999

SBA 910 – Award No. 732 –

FACTS: On the date of claim, Claimants were in through freight service on train UBA-145. This train originated in the Columbus, Ohio, Consolidated Terminal and Claimants took charge of it at High One Track in South Columbus. Claimants were directed to place an end-of-train device on the rear car, inspect the train and perform an initial terminal air test. The Organization seeks an additional day's pay for this service, asserting a Carman was available within the terminal to perform the work. Carrier avers the closest Carman was at Buckeye Yard, twelve miles from South Columbus.

FINDINGS: We find Award 489 to be controlling in this case. The mere fact that work was performed within a consolidated terminal is insufficient to establish that a Carman was employed at the location where the work was performed. In Award 489 the Carman was six miles away; in this case there is no indication they were any closer than twelve miles. The proof offered by the Organization is insufficient to meet the burden set forth in Award 489. That Award asked for evidence that Carmen worked at the point in question. The letter proffered by the Organization merely establishes that they are entitled to work there. Accordingly, we must deny the claim.
12/18/97 – crbdawds

SBA 910 – AWARD No 731

FACTS: On the date of claim, Claimants were in through freight service operating between Columbus and Cincinnati, Ohio. At Moraine, Ohio, a point en route, Claimants were directed to pick up 32 cars to be added to their train. The Organization seeks an additional day's pay for Claimants, asserting they were required to inspect these cars and perform an initial terminal air test while a Car Department employee was on duty.

FINDINGS: We have reviewed the Awards cited by both parties, in particular Awards 415 (and the Interpretation thereto), 573 and 673 of this Board, as well as the material prepared by the BRC. It is our conclusion that the Organization's evidence is directed at the performance of this work at initial terminals or the performance of terminal air tests. It is undisputed that the work involved in this case occurred at a point en route, albeit one where a Carman was on duty. The FRA regulations cited by the Organization do not address air tests performed at a point en route where the crew has simply made a straight pick up. The facts of record do not support any conclusion that Claimants were required to perform a terminal air test.

Article IX Section 2 Of The June 28, 1985 Agreement – cont.

SBA 910 – AWARD No 731- cont.

> Consistent with this Board's finding in Award 573, we conclude the Organization has failed to meet its burden of proving that the work of performing air tests at points en route is exclusively reserved to the Carman craft. Accordingly, we must find that the Incidental Work Rule permits Carrier to require such work without additional compensation.

12/18/97 – crbdawds

SBA 910 – Award No. 919 – See award for the following:

> "On date of claim, Claimants were assigned as Conductor and Brakeman on traveling road switcher assignment WISO-5, reporting for duty at 2:00 pm at Shire Oaks Yard. Upon completion of the switching of their train at approximately 8:15 pm, Claimants called for a car inspector to inspect their train and perform an initial terminal air test. Because car inspectors were not available at that time, Claimants were instructed by the Yardmaster to make their own inspection and air test. For this service, the Organization contends they are entitled to an additional day's pay.
>
> The Carrier acknowledges that car inspectors are bulletined to be on duty at Shire Oaks Yard at the time this service was performed. It asserts, however, that they were not available in the yard at the particular time they were needed to perform the air test. It appears from the initial claim that the car inspectors had been sent up to Mine 84 at the time. The Carrier argues Claimants may be required to perform this work as it is incidental with their own assignment. To support its position, the Carrier cites Article IX, Section 2, Incidental Work, of the June 28, 19895 Agreement, which reads as follows:
>
> > The members of road and yard crews may perform, without additional compensation, any work incidental to or in connection with their assignment. Such work may include but is not limited to such tasks as handling switches, crew packs, turning, spotting and moving locomotives for fueling or supplying, inspecting cars or locomotives, bleeding cars, coupling and uncoupling hose or control cables, **performing air tests,** making reports or using communication devices for any purpose. [emphasis added]
>
> Based upon the statement regarding the location of the car inspectors, as originally filed by the Organization, the Board concludes car inspectors were not available to perform the initial terminal air test at the time it was necessary. It does not matter that carmen are bulletined at the location. If they are not at the location where the work is to be performed at the time the work is necessary, they are not available.

SBA 910 – Award No. 919 – cont.

> Under the circumstances in this case, we need not address the question of whether the performance of initial terminal air tests is reserved exclusively to carmen who are on duty. When they are not available, it is permissible to assign such work to trainmen when it is incidental to their own train. Such was the case here. Thus, we find no violation of the Agreement."

March 1999

SBA 910 – Award No. 333 – Restoring switch to normal position for another crew. **DENIED.**
12/18/97 – crbdawds

SBA 910 – Award No. 797 – Road crew yarded its train and then delivered the locomotive consist to a foreign Carrier's yard. **DENIED.**
12/22/98 crbdawds

SBA 910 – Award No. 738 –
Facts:
"On the date of claim, Claimant was assigned as brakeman on Traveling Road Switcher WSMI-01 at Marion, Indiana. During his tour of duty, Claimant was required to couple to the rear of Train ELIN-2A, a through freight in the Indianapolis-Elkhart Pool, pull it around the wye from the Red Key Secondary to the Marion Branch, and assist it with its pick up and set out at Marion. To accomplish this, it was necessary for Claimant to remove the marker from ELIN-2A and replace it when the work was done. Claimant was then required to perform a visual air test. This work was performed during the hours that yard crews were not on duty. Claim was made for performing the air test on a train other than his own."

Findings:
"In this case, Article IX is squarely before the Board because the Carrier has asserted that the work performed was the type of incidental work permitted by that provision. Thus, we must distinguish this dispute from Award No. 560. The dispute, rather, is directly in line with Award No. 318, as well as Award No. 356, which limit the performance of incidental work to the employees' own train. The principle of *stare decisis* requires us to follow Award Nos. 318 and 356 unless we can find that they are patently erroneous. We have no reason to overturn those Awards. Here, the work was performed on another crew's train, which is not permissible. Accordingly, we must find that the Agreement was violated.

AWARD: Claim **SUSTAINED**. Carrier is directed to comply with this Award within forty-five days."
12/22/98 crbdawds

Article IX Section 2 Of The June 28, 1985 Agreement – cont.

CRT-11718 – **SUSTAINED** for one (1) day's pay. The facts and position as argued were as follows:

STATEMENT OF FACTS:
Claimant was assigned in road service on Train UFS 862. At GW on July 13, 1996 at 11:45 PM the Claimant was ordered by Harrisburg East Dispatcher Mr. States to make an air test on Train USF 863 which was the assigned train of a foreign Carrier crew, i.e., R.J.C. Railroad. Claimant applied for one (1) day's pay as a result of performing said service on the basis that it was service beyond that which can be required of a road trainman.

EMPLOYEES' POSITION:
The Carrier violated Article IX Section 2 of the Agreement dated June 28, 1985 when they required the Claimant to perform an air test on a train other than his own. See Award 234 of Special Board of Adjustment No. 910.
12/22/98 crbdawds

MISCELLANEOUS:

In regard to claims for lost earnings including Reduced Crew Allowance and Productivity Allowance, see letter of July 1, 1992 from Conrail to General Chairmen and July 29, 1992 letter from Conrail to General Chairman Winebrenner both of which confirm that lost earnings include Reduced Crew Allowance and productivity Savings Allowance.

PLB-3510 - Award No. 113 - Recovery of overpayment was limited to one (1) year. (Filed in Rule 2 - Conrail)
12/18/95 crbdawds

CRT-10303 - two (2) hours for an air test on another road train done enroute.
12/18/95 crbdawds

SBA-910 - Award No. 657 - Carrier has demonstrated that the record in this matter is replete with claimant's delays before finally undergoing the physical examination on January 26. Thereafter, it does not appear that claimant submitted paperwork concerning his physical examination in the most expeditious manner possible. In these circumstances, Carrier cannot be held at fault for claimant's failure timely to obtain a physical examination. As the physical requirement was itself reasonable, and Carrier did not act arbitrarily in its application of that requirement to the claimant in this case, it follows that the claim must be **DENIED.**
12/18/95 crbdawds

SBA 910 – Award No. 824 – involves acceptance into ETS – Questions and Answers 1 and 2 of the Agreed Upon Questions and Answers in connection therewith are involved.
12/18/97 crbdawds

Miscellaneous: - cont.

SBA 910 – Award No. 860
STATEMENT OF FACTS: Claimant sustained a personal injury during his tour of duty on May 31, 1994. After receiving extensive treatment claimant was medically approved for return to service and actually marked up for duty on February 20, 1995. The following day (February 21, 1995) claimant reported for yard assignment YPMV-30 at 3:00 PM at Midvale Yard, Philadelphia, PA; however, approximately two hours later (5:00 AM) he marked off duty, contending that he was unable to continue to perform service due to the recurrence of pain from his previous injury.

Subsequently, claimant sued and settled a case against the carrier under the Federal Employers' Liability Act (FELA) for the injury he had sustained on May 31, 1994.....

Notwithstanding such settlement, in April, 1996, claimant presented a *time slip* demanding compensation for the two hours he had worked on the previous February 21, 1995. The initial claim was denied; the carrier explained, *inter alia,* that such claim was not timely submitted pursuant to the provisions of Rule 91, and that it was also barred by the above described *general release.* Thereafter the unsettled claim was progressed to the Manager-Labor Relations, who also denied the claim in a letter dated April 11, 1997.

A review of the undisputed evidence and the applicable (cited) contract provisions compel a denial of this claim as untimely. Although the organization argues that such rule of limitation is not applied uniformly (*i.e. carrier's recovery of wage overpayment)*, we are not authorized or disposed to amend the parties' agreement by *arbitral fiat.* Furthermore, we would not parenthetically that there appears to be a substantive difference between a *disputed claim for compensation* and *administrative errors (overpayment/shortages)* in previous wage payments.

Based on our sustaining decisions concerning the claimed procedural impropriety, it is not necessary (*moot*) that we address and resolve the carrier's alternative defenses of waiver/estoppel/incomplete appeals records, etc.

AWARD: Claim **DENIED."**
12/22/98 crbdawds

EMPLOYEE PROTECTION

Arbitration Board in connection with New York Dock Protection - Line Sale - Wisconsin Central from Soo Line. Provides insight in the application of New York Dock Protection. Pay special attention to the dissent of Labor. Filed in New York Dock. See Peterson's response to dissent in same file.

Employee protection See International Circular No. 20-90 - Springfield Terminal.

EMPLOYEE PROTECTION – cont.

Employee Protection - See International Circular 24-90. Employee Protection s involve the "change in residence" provision of the protection conditions and associated moving allowance.

Employee Protection and Guarantees. See International circular No. 21-90

Circular No. 3-93 - filed in New York Dock for the following CNW sold 97.03 miles of line to the Wisconsin Central which left home terminal at Spooner same 67 miles from Itasca the location where the Spooner crews had to now report for duty. The crews signed up at Spooner and DH between Spooner & Itasca.

The Arbitrator does not have the jurisdiction in the absence of a showing that moving the home terminal from Spooner to Itasca is "necessary" to carry out the approved transaction to change existing collective bargaining agreements regarding the establishment of Spooner as a home terminal.

See New York Dock File for decision of Arbitrator John B. LaRocco regarding UTU (E) Vs Conrail as to the following:

STIPULATED ISSUES IN DISPUTE

(1) Does the Referee have the authority under the New York Dock to determine whether the Conrail or the MGA Schedule Agreement will apply on the consolidated operation.

(2) If the answer to question (1) is yes, subsequent to the consolidation of the Monongahela Railway Company operations into Consolidated Rail Corporation, will the collective bargaining agreements applicable to Locomotive Engineers and Locomotive Firemen formerly employed by Monongahela Railway Company be:

1) The answer to the first stipulated issue in dispute is "Yes".

2) The answer to the second stipulated issue in dispute is the collective barraging agreements governing rates of pay and working conditions of Locomotive Engineers and Reserve Engine Service Employees on the Consolidation Rail Corporation.

Employee Protection in regard to a Track abandonment. See Letter of January 7, 1994 to A. L. Suozzo from Daniel R. Elliott, Assistant General Counsel, UTU filed in GU-202R which reads in part here pertinent:

EMPLOYEE PROTECTION – cont.

> "I can understand your concern about loss of trackage, you will be glad to know that if the track is abandoned, all adversely affected employees will automatically receive labor protection under Oregon Short Line R. Co. - Abandonment Goshen, 360 ICC 91 (1979)."

See Amtrak Series 38-11 Opinion & Award filed in "New York Dock File" wherein the Board answered the following question in the negative:

> "Does the 'Doctrine of Laches' apply to the Atchison, Topeka and Santa Fe Railway Company, Coast Lines, Appendix C-1 Implementing Agreement for those claims filed three and one-half (3-1/2) years subsequent to the date of the transaction?"

See decision of John B. LaRocco dated November 22, 1996 filed in Rule 9 Amtrak On and Off-Corridor which pertains to exercising seniority in connection with a claim under C-2, reading in part pertinent:

> "Our decision narrowly provides that, since a voluntary option to exercise seniority is available to clerical employees, an employee affected by a transaction must be unable to claim a position on the employee's seniority district to be deemed a dismissed employee:
>
> Second, an employee who voluntarily exercises his seniority to a position on the employee's seniority district more than 30 miles from the employee's current work location, in order to fulfill the obligation set forth in the last clause of Article I (c), the employee's change of residence can only be characterized as a required change of residence because there is an element of compulsion to the voluntary exercise of seniority. Stated differently, inasmuch as the voluntary exercise of seniority is incited by the employee's desire to avoid a suspension of protective benefits, the exercise of seniority beyond a 30-mile radius would be tantamount to a required change of the employee's residence. The employee would thus be entitled, if otherwise eligible, to relocation and real estate benefits."

NOTE: This also shows as an entry under Rule 9 – Amtrak.
January 99

NEW YORK DOCK

UTU vs UP – Salt Lake City Hub and Denver Hub. Filed in New York Dock.

UTU vs CSX – Transfer, consolidate and merger of train operations. This involved Collective Bargaining Agreements and Seniority. Filed in New York Dock.