

PUBLIC LAW BOARD NO. 3304

Case No. 376

Award No. 341

PARTIES TO DISPUTE: UNITED TRANSPORTATION UNION

-and-

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of various Missouri Seniority District (Beardstown) Conductors and Brakemen for eight (8) hours pay account not called for Helper service.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and employees within the meaning of the Railway Labor act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

In June of 1992, the Carrier operated Helper service between Beardstown and Concord, Illinois with an Engineer only. It is the Organization's position that Rule 59 of the Conductor's and Trainmen's Schedule does not allow the Carrier to operate Helper service over this territory and the assignment was therefore extra road freight service requiring a train crew. The Organization further contends that Helper service must be manned by either a Fireman or a Trainman in addition to the Engineer.

The August 25, 1967 National Agreement eliminated all rules which restrict double-header or helper operations. This would include Rule 59 on the Burlington Northern Railroad entitled DOUBLE HEADING AND HELPER SERVICE. Inasmuch as Rule 59 has been eliminated, the Carrier was not restricted from operating Helper Service between Beardstown and Concord, Illinois.

Nor was the Carrier required to assign either a Fireman or a Trainman to Helper service, in our opinion. The Helper Service

Agreement dated May 28, 1976 is clear and unambiguous. it provides, in pertinent part, that:

1. The decision as to whether a trainman - yardman will be assigned with a helper engine rests solely with the Carrier.

This identical language was carried forward in the 1982 Helper Service Agreement between the parties. Pursuant to this explicit contractual language, it is the Carrier's prerogative whether to man Helper Service with a Trainman.

The Organization avers that the 1976 and 1982 Helper Service Agreements were not intended to give the Carrier the right to blank both the Fireman position and the Trainman position on Helper service. Rather, the above language was inserted in the Helper Service Agreements to protect the rights of Firemen to fill Helper service positions. When a Fireman was not available then the Carrier could use a Trainman in Helper service, according to the Organization.

While this may have been the Organization's intent when it agreed to the Helper Service Agreement in 1976, nevertheless the clear language of that Agreement must be applied as it was plainly written. It is a canon of contract construction that clear and unambiguous contractual provisions must be given effect even though the result may be contrary to the intent of one of the parties. Although the Organization may not have intended to give the Carrier the right to blank both Fireman and Trainman positions in Helper service, nonetheless both the 1976 and 1982 Helper Service Agreements gave the Carrier the discretion whether to assign a train service employee to Helper service. It therefore had the right to operate Helper service with an Engineer only. The claims must be denied as a result.

AWARD: Claim denied.

Robert M. O'Brien  
Robert M. O'Brien, Neutral Member

W.T. Pearl  
W.T. Pearl, Employee Member

R.L. Luther  
R.L. Luther, Carrier Member

Dated: JUNE 14, 1995