

PUBLIC LAW BOARD 6390

In the Matter of the Arbitration Between:  
**BURLINGTON NORTHERN SANTA FE**  
**RAILWAY COMPANY**

and

NMB Case No. 6  
Claim of J. W. Van Meter,  
**H. Pineda**

**THE UNITED TRANSPORTATION UNION**

**STATEMENT OF CLAIM:** Claim of Conductor J. W. Van Meter and Brakeman H. Pineda for 25 mile arbitrary under Code HO, on the alleged basis that they were required to ride the rear of a car on a reverse movement for a distance in excess of one mile.

**FINDINGS OF THE BOARD:** The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant(s) employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on May 18, 2002 at Washington, D.C.. Claimant was not present at the hearing. The Board makes the following additional findings:

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Trainman and Yardman crafts.

On August 13, 1999, Claimants were employed as the conductor and brakeman on Road Switcher R KAN0041. The record establishes that on the date of claim, R KAN0041 was equipped with a "platform car", from which Claimants protected reverse switching movements during the course of their regular duties. The "platform car" at issue in this particular case was a retired caboos with the doors welded shut, and the amenities of the caboos therefore inaccessible. The car was utilized exclusively to provide Claimants with a safe platform from which to protect the point of shoving movements, some of which exceeded one mile. Claimants apparently stood on the Platform during the move.

In due course, the instant time claim was presented on the basis that Claimants were required to "ride on the side or rear of

la car]" for a distance in excess of one mile in violation of Article X, Section 3 of the October 15, 1982 National Agreement and Arbitration Board 419 (Moore, 1984). The claim stated:

Claim hanging on pay at 60500. Furnished a caboos to shove to the Farmland, however, the caboos ATSF 999759 has the doors welded shut and cannot be used as a

caboose. The distance to Farmland is **MP 26.5 to MP 24.2**,  
2.3 miles.

Article X of the 1982 National Agreement provided for elimination of cabooses,  
Section 3 of which stated:

Crew members will not as a result of the elimination of cabooses be required to  
ride on the side or rear of cars, except in normal switching or service  
movements that are not for extended distances.

Neutral Preston J. Moore subsequently addressed "extended distances" in  
Arbitration Board 419 dated January 3, 1984, finding in pertinent part:

After careful consideration of the matter, it is the opinion of the board that  
anything in excess of one mile constitutes an extended distance.

Section 7 (Penalty) of Article X of the 1982 National Agreement, the basis for  
the instant claim, further states:

If a train or yard ground crew has been furnished a caboose in accordance with  
existing agreement or practice on a train or assignment prior to the date of  
this Agreement and such train or assignment is operated without a caboose other  
than in accordance with the provisions of this Article or other local agreement  
or practice, the members of the train or yard ground crew will be allowed two  
hours' pay at the minimum basic rate of the assignment for which called in  
addition to all other earnings.

The Carrier denied the instant claim, arguing that Claimants neither rode on  
the *side* nor rear of the platform car within the intent and meaning of the 1982  
National Agreement and clarifying Arbitration Board 419, and as resolution of the  
matter could not be reached on the property, it was submitted to the Board for  
disposition.

**POSITIONS OF THE PARTIES:** The Organization argues essentially that a "platform car" is  
just that, a car and not a caboose. Consequently, reasons the Organization, when a  
trainman rides the side or rear of a platform car in a reverse movement in excess of  
one mile, he is entitled to a penalty arbitrary of two hours (25 miles) under Article  
X, Section 3 of the 1982 National Agreement as

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there is no material difference between "hanging on" the side or rear of a freight car using ladders or stirrups and grab irons, and standing on the platform of a car which functioned as a caboose in its former life.

The Organization cites Award 5 of this Board sustaining a claim for "hang on" pay, wherein the Board found in pertinent part as follows:

The Carrier violated Article X, Section 3(d) of the 1982 National Agreement by requiring Claimants to ride on the side or rear of cars for a distance in excess of one mile in circumstances in which, but for the consequences of the 1982 National Agreement, they would have ridden a caboose. The Organization's claims are sustained. Claimants shall be paid two hours' pay.

The Organization contends that the central issue raised in that case is essentially identical to the one herein before the Board. Accordingly, the Organization argues that the *platform* on Car ATSF 999759, from which Claimants protected reverse switching movements in excess of one mile on August 13, 1999, constituted the "rear" of that point car, and as such, they are entitled to the "hang-on" arbitrary claimed. The Organization urges the Board to sustain the claim in its entirety on that basis.

The Carrier points out that the claim at issue was initially denied on the basis that the ATSF 999759 did not function as a caboose on the date of claim, but instead was utilized as a "shove" car from which Claimants were able to safely protect the point of an extended reverse switching movement associated with their assignment. According to the Carrier, then, the Organization originally contended that the "shove" car was actually an improperly maintained caboose, and rejected the claim on logic similar to that expressed by Neutral R. G. Richter in Award 16 of PLB 5907 (UTU v. CSX) which stated in pertinent part:

The Carrier has created a new class of car called a shoving platform. In reality it is an old caboose that has been stripped of most of its appurtenances. The car is used to provide train service employees with shelter from the elements as well as an alternative to riding on the side of freight cars in reverse moves.

On the date of this claim claimant was given a shoving platform. The Claim was filed because the

caboose (shoving platform) did not meet the requirements of the agreement.<sup>1</sup>

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The question before this Board is whether the shoving platform is a caboose. The Carrier argues it is not. Obviously, the Organization claims it is one. Both parties agree there was an End-of-train device used in addition to the shoving platform.

Both parties have made strong arguments. The Organization has cited several awards concerning the supplying of cabooses. The Carrier has given examples of other Carriers having similar cars. Neither party cited any awards on point.

It is obvious the shoving platform does not serve the purpose of a caboose. The crew is not required to perform any of their work other than one crew member riding on the platform during the reverse movement. The paper work is done on the locomotive, and the crew is allowed to ride the locomotive at all other times. Article X Section 7 does not apply in this case.

On that basis, the Richter Board denied the claim.

The Carrier argues that the same reasoning applies. According to the Carrier, it obtained the right to eliminate cabooses pursuant to Article X of the 1982 National Agreement, and did so. Moreover, argues the Carrier, Claimants were not required to hang on the side (or rear) of any car for an extended (one mile) distance as a result of that elimination. The Carrier asserts instead, that Claimants rode on the platform of a "shove car", and a shove car is not a caboose. Accordingly, the Carrier asserts that the Agreement was not violated, and urges the Board to deny the claim in its entirety.

**DISCUSSION AND ANALYSIS:** It was the Organization's burden to prove that the Carrier's action utilizing the platform car without granting hang on pay was in violation of its contractual obligations. Based on review of the record and cited precedent, the Board is persuaded by the arguments of the Carrier. As both

<sup>1</sup> The Richter Board referred to Article X Section 5 of the 1982 National Agreement requiring carriers to properly maintain cabooses retained in service.

parties stipulate that ATSF 999759 was *not a caboose* on August 13, 1999, the question before the Board essentially reduces to whether riding on a rear platform on the point of a reverse switching movement constitutes "hanging on" the rear of a car within the intent and meaning of Article X of the 1982 National Agreement. The Board concludes that it does not.

The Organization appears to argue that the Carrier is obligated to pay the "hang on" penalty awarded by the Board in Award 5 *unless* (1) the Carrier provides a serviceable caboose under Article X Section 5 of the 1982 National Agreement, or (2) the crew is required to "hang on" for less than one mile. The Carrier, on the other hand, reasons that it is required to pay the penalty *only if* (1) there is a non-conforming caboose (according to the cited *Richter* findings) or (2) a crew member is required to hang on to the rear or *side* of a *freight* car on the point of a reverse movement in excess of one mile. The parties agree, at least in this case, that ATSF 999759 was *not a caboose*, for the purposes of the contractual definition. Thus, concludes the Board, the first condition requiring a penalty payment has not occurred.

The second condition triggering penalty payment has two essential elements: first, the reverse movement(s) at issue must be in excess of one mile, and second, a crew member must have been required to ride the "side or rear of cars" during the move. In the instant case, there is no dispute that the shove in question exceeded one mile. Therefore, the only remaining question is whether or not Claimants rode the "rear" of ATSF 999759 so as to entitle them to the penalty claimed.

Taken in context, the Board is persuaded that the "side or rear of cars" as stipulated in Article X of the 1982 National Agreement refers to *freight* cars, and addresses the obvious safety implications associated with elimination of cabooses, in requiring train service employees to utilize stirrups and grab irons or ride ladders over extended distances under a variety of potentially unfavorable environmental conditions. The Richter Board evidently concluded likewise, as it specifically cited "freight cars" in the findings referenced above. Instead, as in this case, trains equipped with "shove cars" or "platform cars", provide train service employees with a secure, comfortable and relatively and protected place from which to reverse movements. There is consequently no logic in penalizing the Carrier for taking such considerations to heart in providing them with such a car.

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Moreover, the Board is not persuaded that a caboose-like platform, itself, constitutes the rear (or side) of a freight car. In contrast to the situation in Award No. 5 before this Board, Claimants in the instant case were able to stand comfortably on the platform and were not required to stand on stirrup steps and hang on to grab irons during the move. Indeed, if Claimants had been required to "hang on" *outside* the platform of ATSF 999759, a different conclusion might follow. The Board finds that when Claimants rode *on* the platform of ATSF 999759 during a reverse movement in excess of one mile on August 13, 1999, neither the express language nor the obvious intent of Article X, Sections 3 and 5 of the 1982 National Agreement were violated. Accordingly, the instant claim must be, and is, denied. The Award so reflects.

**AWARD:** The claim is denied.

Dated this 27th day of July 2002.

M. David Vaughn, Neutral Member

Gene L. Shire, Carrier Member

Rick Marceau, Employee Member