

Parties to dispute:

Brotherhood of Locomotive Engineers

and

Chicago and North Western Transportation Company

Statement of issue:

What will be the terms and conditions of a system-wide rule governing road switchers on the entire C&NW established under Article VII, Section 2 of the BLE Arbitration Agreement of May 19, 1986?

Findings:

The parties to this dispute are subject to an Arbitration Agreement Award No. 458 governing wages and rules reached in their behalf on May 19, 1986. Article VII, Section 2 --New Road Switcher Agreements of that Award is at issue here.

The parties hereto do not have a rule permitting the establishment of "road switcher assignments through (their) system . . ." Accordingly, the C&NW served notice to establish such a rule August 6, 1986. Meetings were held to discuss the Carrier's proposal. On June 4, 14, 1989, an agreement was reached between the General Chairman and Carrier. The proposal was distributed for ratification, and it failed.

The matter was then submitted to arbitration in accordance with Article VII, Section 2 b c and d.

The July 15, 1989 Agreement which failed ratification provided:

1. Road switcher assignments will be regularly assigned to work on and off duty at the same point and have clearly and reasonably defined working limits. They shall be bulletined in accordance with applicable schedule rules and agreements, and shall be compensated the five-day yard rate of pay.

2. It is recognized that under present agreement rules governing road switcher assignments engineers may be required to, without penalty to the Carrier, operate into, out of and through terminals of their run, or into, out of or through any point of their assignment as many times as may be required.

3. Agreements covering initial or final terminal switching or terminal delay will not apply to these road switchers.

4. The right of the Carrier to establish interseniority district/interzone runs shall be in accordance with existing scheduled rules and assignments.

5. C&NW District Rule 38 shall apply to engineers assigned to road switchers.

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

After the agreement failed ratification, the Organization raised additional questions, and they seem to be bottomed on the fear that the Carrier, armed with the above agreement, would take liberties not intended.

The concern of the organization centers around the Carrier, perhaps, requiring exceedingly long hours of employees, that they be transported to their off-duty point in a manner not intended, that yard switch engines be improperly eliminated to allow the road switchers to do work to which yard switchers are now assigned.

The Organization outlines in its brief certain applications which they fear. We grant that in the industry there are provisions in agreements on other railroads not incorporated into the cited memorandum of agreement. We are aware the provisions differ, as they must. We also note that there is a similar agreement to the one here involved between the C&NW and the UTU. We are not restricted in any way to the provisions therein, but we may consider its provisions.

We find that Paragraph 1 of the July 15, 1989 Agreement cited above should read:

1. Road switcher assignments will be regularly assigned to go on and off duty at the same point and have clearly defined working limits. They shall be bulletined in accordance with the applicable schedule rules and agreements, and shall be compensated the five-day rate of pay.

The remainder of the agreement remains as cited above.

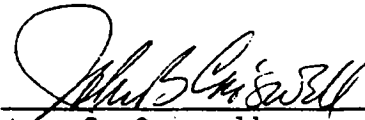
However, the Carrier is admonished that it can not do indirectly that which it can not do directly. Further, it is reminded that the road and yard barriers remain as outlined in all existing agreements between these parties when not in specific and direct conflict herewith.

Thus, existing rules governing guarantees, travel allowances, meals, relief service, holiday pay, and other pay provisions, including overtime, remain in force and effect.

Award:

The Road Switcher Agreement between the parties is as outlined in Findings.

Dated this 10th day of April, 1990.

A handwritten signature in dark ink, appearing to read "John B. Criswell", is written over a horizontal line.

John B. Criswell,
Neutral Member