

ARBITRATION BOARD NO. 419

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 In The Matter of the Arbitration *
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 THE ATCHISON, TOPEKA AND SANTA FE *
 RAILWAY COMPANY *
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 and *
 *
 CONDUCTORS' TRAINMEN'S AND YARDMEN'S *
 COMMITTEES, EASTERN AND WESTERN LINES *
 AND COAST LINES *
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FINDINGS AND AWARD

Before: Preston J. Moore, Arbitrator

QUESTION TO BE DETERMINED:

1. May the Carrier (AT&SF) eliminate cabooses from trains or assignments in the category of "through freight service," consistent with the 25 percent limitation in Article X, Section 4(a) of the October 15, 1982 National Agreement?

BACKGROUND:

During the last round of national negotiations with the United Transportation Union (UTU), the Carriers, represented by the National Railway Labor Conference (NRLC), proposed national guidelines and procedures to determine the manner in which cabooses could be eliminated. These would be implemented on an individual railroad basis. Binding arbitration would be available in those instances where no voluntary agreement could be reached.

When agreement on all outstanding issues was not reached, the caboose issue, together with other issues involved in the notices of the parties in the last round of negotiations, was presented to Emergency Board No. 195. (1) After full and complete

(1) Board 195 appointed by President Reagan on July 21, 1982 consisted of Arnold R. Weber, Daniel Quinn Mills and Jacob Seidenberg.

presentation by UTU and NRLC spokesmen concerning the pros and cons of caboose elimination, the Board issued its recommendations. It is deemed unnecessary to set forth herein that report. Subsequent to the report of Emergency Board No. 195, the parties entered into a National Agreement on October 15, 1982 in disposition of all issues which were in dispute, including cabooses.

On November 8, 1982 this Carrier served notice on all three Santa Fe General Chairmen to eliminate cabooses in all through freight service protected by pool (chain gang) crews. The Carrier met with Organization representatives on numerous dates in connection with the elimination of cabooses, and on October 20, 1983 a tentative agreement was initialed by Carrier and Organization representatives on each of the three grand divisions of the Carrier. The agreement was ratified on the Northern and Southern Divisions, but on the Eastern, Western and Coast Lines, it was not ratified.

On June 26, 1984 this arbitrator was appointed by the National Mediation Board to hear this dispute.

Following the appointment of the neutral, formal meetings were held between the neutral and the parties on September 13, 1984. In accordance with Section 1(e), and after fully considering the requirements of Sections 2, 3 and 4 of the National Agreement, and the able and sincere arguments of both parties, the following determination is made.

AWARD:

The procedures of Article X, Section 1 have been followed. This dispute is properly before the neutral, and the neutral has jurisdiction to make this determination.

ISSUES IN CONTENTION:

Under the terms of the National Agreement, the parties had established that the parties themselves and the arbitrator will consider certain factors. Those factors are (a) safety of employees; (b) operating safety, including train length; (c) the effect on employees' duties and responsibility resulting from working without a caboose; (d) availability of safe, stationary and comfortable seating arrangements for all employees on the engine consist; (e) availability of adequate storage space in the engine consist for employees' gear and work equipment. The parties have agreed that those factors are guidelines, not absolute, and are not conditions. They are subject matters to be considered by the neutral in the event of arbitration,

The issues are resolved as follows:

(a) Seating Arrangements

Because of the possible disagreement between the parties of the intent of this provision, the Board will retain jurisdiction of this section of the award. If the parties are unable to agree that the provisions in this section have been complied with by the Carrier, the Board will make more specific provisions.

When a train is operated without a caboose, pursuant to this award, safe, stationary and comfortable seating will be available to each ground employee, working or deadheading, on the locomotive consist, as well as adequate heat, when climatic conditions necessitate.

A controversy arose when the Organization called the Board's attention to rules on the property concerning seating arrangements on cabooses and engines which provide that deadheading crew members will not be required to ride units of a locomotive consist. The Board finds that Article X of the October 15, 1982 National Agreement is controlling for operations without cabooses, and this Agreement specifically covers seating arrangements for deadhead crews in Section 3(e) and Section 2(d), which read as follows:

3(e) Additional seating accommodations will not be required on trains having a locomotive consist with two or more cabs equipped with seats. Crews required to deadhead on the locomotive will be provided seating in accordance with Section 2(d).

2(d) Availability of safe, stationary and comfortable seating arrangements for all employees on the engine consist.

Locomotive units designated for occupancy by train crew members will be cleaned, including toilet facilities, and supplied with necessary equipment, including adequate cooled, fresh drinking water, sanitary drinking cups, waterless soap or acceptable substitute and paper towels, by employees other than members of the train crew. Stationery supplies (forms) will be provided to conductors at the on-duty points en route for their use.

The conductor will be furnished a compact folder and/or clipboard for his use in the carrying and completion of the forms. Replacement of these folders (clipboards) will be made by the Company without cost to the employee when:

1. worn out, damaged or destroyed in performance of railroad service;
2. stolen while employee is on duty without neglect on part of employee.

(b) Storage Facilities

There must be adequate storage space provided for the employees' gear and work equipment. It is deemed to be unnecessary to require enclosed compartments, such as a locker.

(c) Arbitrary Allowance

The Organization strongly contested that the employees should be entitled to an arbitrary allowance for being required to operate a train without a caboose. It is particularly urged with this Carrier because the parties have entered into pool caboose agreements.

One of the pool caboose agreements provides for an arbitrary when the employee operates his train without an assigned caboose. This matter has been pursued and studied thoroughly. It must be recognized that all previous awards on this subject matter have not provided for an arbitrary. At the same time it is recognized there was not a pool caboose allowance agreement in effect on such properties.

The Board fails to comprehend why an employee operating without an assigned caboose should be entitled to an arbitrary when another employee operating without any caboose is not entitled to an arbitrary. Another way of stating the matter is that an employee was entitled to an arbitrary when he was operating with a pool caboose. He no longer is operating with a pool caboose, he is operating without any caboose.

Several Boards have established that an arbitrary is not provided for by the National Agreement. On that basis the Board finds that an arbitrary is not justified.

(d) End of Train Device

At points where other qualified personnel are available, ground crew members will not be required to handle, place, move, attach or take off the end-of-train device from the rear or last car of trains operated without a caboose. However, when other appropriate qualified personnel are not available, ground crew members (road or yard) will be required to place, move, attach, take off or handle to and from designated locations the end-of-train device from rear or last car of their own train or yard movement.

NOTE: The foregoing is only applicable to crews when performing service requiring a caboose by current agreement.

Ground crew members will not be held responsible for malfunctions of the end-of-train device provided they have given it proper handling while in their charge. This award is not intended to be a blanket authority for the Carrier to require the crews to perform this service. In the event that other qualified

personnel are available a substantial portion of the time, then in that event, train crews may be required to perform this service when such qualified personnel are not available.

(e) Exhaust Fumes From Diesel Units

The Carrier will conduct periodic tests on trailing units of multiple unit consist to determine whether or not exhaust fumes pose a health hazard to employees riding thereon. If it is determined that a health hazard exists, corrective steps will be taken immediately.

(f) Crews Waiting Extended Periods of Time

The parties have agreed by questions and answers that an extended period of time is not defined but the proof of rule and reason must apply. This section refers to Article X, Section 3 of the October 15, 1982 National Agreement which provided that cabooses would not be eliminated on certain line runs, locals and road switchers where normal operations required crews to stand by waiting for cars or trains for extended periods of time when such crews cannot be provided reasonable access to the locomotive or other appropriate shelter during such extended periods.

This Board has been urged by the Organization to approve the rule of reason should be further limited. This referee in previous decisions ruled that 30 minutes was the maximum during adverse weather conditions. The Board would follow that decision and establish the same rule in the instant case.

(g) The Use of Radios

The Organization urges that each member of the crew should be issued a portable radio. Other awards have indicated that one radio is sufficient, or that the matter should be left to the discretion of the Carrier. There are instances when more than one radio would be necessary. We would hope that under such circumstances the Carrier would issue as many radios as were necessary to safely perform the service; however, it is the opinion of the Board that it is unnecessary on all assignments to require that each member of the crew be issued a radio. Under the circumstances it is the decision that at least one portable radio will be made available to such crews.

(h) Riding on the Side or Rear of Cars

Article X, Section 3 of the October 15, 1982 Agreement provided:

- (d) 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 or reverse movements that are not for extended distances.

The Organization has requested that "extended distances" be defined. After careful consideration of the matter, it is the opinion of the Board that anything in excess of one mile constitutes an extended distance when moving from one work location to another, where such moves are presently made with a cabooses. The one-mile limitation will not apply when placing and/or removing cars in a siding, spur or yard track exceeding one mile in length, nor will it apply in emergency situations.

(i) Notification of the Elimination of Cabooses

Commencing 90 days after the elimination of cabooses under this award, the Carrier is to provide the General Chairmen with the information regarding trains which are operated without cabooses on a monthly basis. The General Chairmen are entitled to this information in order to determine if the annual operation of caboosesless trains exceeds 25 percent.

(j) Sequence of Elimination of Cabooses

The sequence of elimination of cabooses has been determined by the National Agreement, and it is unnecessary, therefore, for that subject matter to be determined by the Board.

AWARD:

Subject to the terms of Article X of the Agreement of October 15, 1982 and the requirements set forth herein, cabooses may be removed from all through freight trains to the extent of 25 percent of the total through freight conductor trips for the calendar year 1981.

Prior to this award being implemented, the Carrier must revise the operating rules to meet with the requirements of the National Agreement, and further, all employees must be familiar with those rules.

Provided those requirements are met, this award will be effective October 1, 1984.


Preston J. Nocre, Arbitrator

September 18, 1984