

SPECIAL BOARD OF ADJUSTMENT NO. 910

PARTIES ) UNITED TRANSPORTATION UNION (T)  
TO )  
DISPUTE ) CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

"Claim of Conductor F. D. Laidecker and Brakeman B. C. Riggle for 1 hour and 15 minutes held away from home terminal time for December 28, 1985." (System Docket No. CRT-3927; Central Region, Allegheny Division, Case No. AT-46/86)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

After operating train ENBU-7 from Newberry, PA to Buffalo, NY, Claimants marked off duty at this latter terminal location at 7:30 P.M. on December 27, 1985. They were thereafter called to deadhead via taxi from Buffalo, their away-from-home terminal, at 12:45 P.M. on December 28, 1985. The taxi arrived late, and did not depart Buffalo until 2:00 P.M.

The Organization maintains that under the provisions of Rule 21(a), Claimants are entitled to be paid Held Away From Home Terminal Time after the expiration of 16 hours, calculated from the time they marked off duty at Buffalo, i.e., beginning at 11:30 A.M. on December 28, 1985. Accordingly, it says the issue to be decided in this case is: "[W]hether claimants are entitled to be paid two (2) hours and thirty (30) minutes Held Away From Home Terminal Time based on the time from 11:30 A.M. to 2:00 P.M. the time the taxi actually departed or the one (1) hour and fifteen (15) minutes actually paid based on the time from 11:30 A.M. to 12:45 P.M. the time claimants were ordered to deadhead."

The Organization asserts that since Rule 21(b) clearly provides that when an employee is directed to deadhead that held away from home terminal time ceases at the time the train leaves the terminal, that it must follow that held away from home terminal time ceased at the time the taxi left the terminal.

It is the Carrier's position that the Claimants were properly allowed one hour and fifteen minutes held away from home terminal time from 11:30 A.M. on December 28, 1985, or 16 hours from the time relieved from previous duty, to 12:45 P.M. on December 28, 1985, when Claimants were ordered to deadhead via taxi. It says a thorough review of Rule 21(b) will reveal that the payment of

held away from home terminal time will cease at the time pay begins for such service or deadheading. Further, the Carrier says Rule 21(b) also provides that in no event will there be duplication of payment for deadheading and held away from home terminal time.

The Carrier also maintains that its position is supported by Award No. 19 of Special Board of Adjustment No. 894 (Referee: Judge Arthur W. Sempliner), wherein the Board denied the claim of a Conrail Engineer for 38 miles deadhead; 20 minutes held away from home terminal time (HAHT) in the following manner:

"Claimant has been allowed deadhead based on one-half the rail miles. The claim is based on highway miles. Claimant had deadheaded by bus. Also 20 minutes HAHT, as the bus did not depart at 9:20 a.m. as claimant was called, but did depart at 9:40 a.m.

Claimant's service and pay started at time claimant was called, 9:20 a.m. Deadhead is based on the mileage of the assignment, here the rail miles."

Rule 21(b) reads in its entirety as follows:

"(b) Should a trainman be called for service or ordered to deadhead after pay begins, the held-away-from-home terminal time will cease at the time pay begins for such service or, when deadheading, at the time the train leaves the terminal, except that in no event will there be duplication of payment for deadhead time and held-away-from-home terminal time."

In the opinion of this Board, it is evident from Rule 21(b) that if a trainman is ordered to deadhead after held away from home terminal pay begins at the expiration of 16 hours, that the Carrier does not have the latitude of ceasing such payment and placing the trainman under deadhead payment until the train on which that individual is deadheaded leaves the terminal. The rule says that when deadheading, the terminal time will cease at the time the train leaves the terminal. It would seem to follow that a trainman is entitled to deadhead pay on the same basis with regard to the use of other available transportation, or, as in the instant case, with the use of a taxi.

At the same time, it stands to reason that payment under one rule must terminate or prohibit payments under another rule. Thus, we believe that in contracting for Rule 21(b) that the parties were in agreement that a trainman would not be paid under two or more rules simultaneously, i.e., held away from home terminal time and deadheading.

Insofar as use of the taxi for deadheading is concerned, it must be presumed that the Carrier was the agent responsible for assuring that the taxi would leave the terminal at the time it had ordered Claimants to deadhead, i. e., 12:45 P.M. That the taxi, as happens with trains, did not depart the terminal at the desig-

nated time, may not therefore be said to have relieved Carrier of its obligation under Rule 21(b) to payment of held away from home terminal payment until the taxi, as with a train, actually left the terminal. Claimants therefore continued on held away from home terminal time until the taxi did in fact depart the terminal at 2:00 P.M.

Under the circumstances, it will be this Board's determination that as a result of the taxi being unreasonably late that the Claimants automatically reverted to held away from home terminal time and are entitled to payment of one hour and fifteen minutes additional held away from home terminal time.

Turning now the question of duplicate payments being prohibited by Rule 21(b) and what amount of compensation, if any, may be due Claimants. Rule 54(c) provides that when deadheading is paid for separately and apart from service a trainman shall be allowed a minimum day at the basic rate applicable to the class of service in connection with which deadheading is performed, unless actual time consumed is greater, and in which event the latter amount shall be allowed. Therefore, the Board will hold that any payment due Claimants be computed on the basis of held away from home terminal time having ceased at 2:00 P.M., and Claimant being allowed deadhead payment in application of Rule 54(c) as that rule would normally apply with respect to deadhead payments from that time (2:00 P.M.) until such time as Claimants subsequently arrived at their home terminal in Newberry, PA.

AWARD:

Claim sustained to the extent set forth in the above Findings.

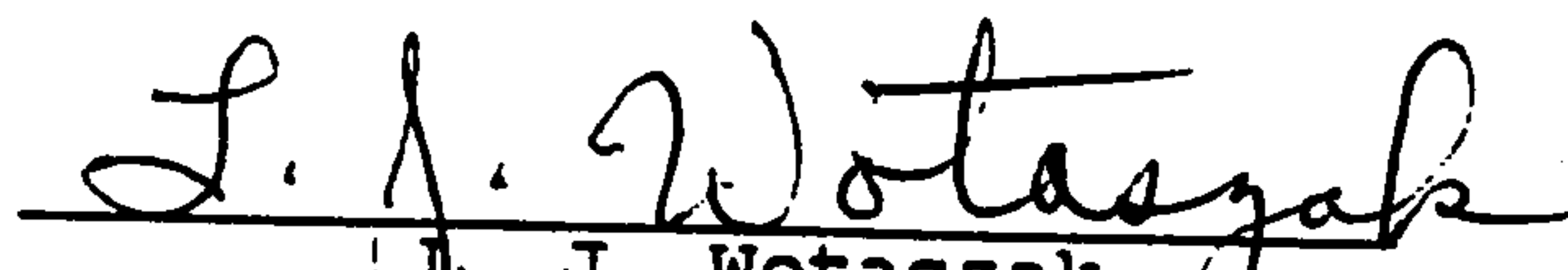


Robert E. Peterson, Chairman  
and Neutral Member



Robert O'Neill  
Carrier Member

*Direct attach*



L. J. Wotaszak  
Organization Member

Philadelphia, PA  
October 27, 1987

Dissent to Award No. 214 of  
Special Board of Adjustment No. 910

I dissent to the opinion of the Board, "that it is evident from Rule 21(b) that if a trainman is ordered to deadhead after held away from home terminal pay begins at the expiration of 16 hours, that the Carrier does not have the latitude of ceasing such payment and placing the trainman under deadhead payment until the train on which that individual is deadheaded leaves the terminal" and "It would seem to follow that a trainman is entitled to deadhead pay on the same basis with regard to the use of other available transportation, or, as in the instant case, with the use of a taxi."

The "opinion" is not of the Board, but of the Board majority. The "opinion" is fallacious as it does not have rule support and has distorted the application of Rule 54 - Deadheading.

On this property from October of 1981 when the promulgated rules of Arbitration Board 385 were placed in effect deadheading, either separate or combined, is paid from the time ordered to report for deadheading or service. Rule 13 requires a call of not less than 1 hour and 30 minutes before a regular pool or extra man is required to report for service or deadhead. Service is paid for from the time ordered to report and deadheading is paid for from the time ordered to report for deadheading. This pay provision prevails in the free period of Rule 21 and when ordered for service after the held at the away from home terminal time of Rule 21 begins.

Rule 21(b) specifically provides if ordered to deadhead after held at away from home terminal begins the held at away from home terminal will cease at the time the train leaves the terminal except that in no event will there be a duplication of payment for deadhead time and away from home terminal time.

In the instant case claimants were ordered to deadhead at 12:45 PM. In the application of the rules of the schedule agreement they were paid for their deadhead from 12:45 PM as ordered. Claimants were under held away from home terminal pay and under the exception of Rule 21 regarding duplicate payments, the away from home terminal time ceased for pay purposes at 12:45 PM.

Because the taxi was late the "opinion" of the Board majority was that the away from home terminal time should be continued to 2:00 PM and the deadhead pay should be pushed back to 2:00 PM. There is no provision in the deadheading rule to postpone the start of deadhead pay because the means of transportation is late. The exception for dual payments is in the away from home terminal rule, it is not in the deadheading rule.

In their zeal to allow claimants an additional one hour fifteen minute pay they have modified the deadheading rule without authority to do so.

We agree with the Board majority that it stands to reason that payment under one rule must terminate or prohibit payments under another rule. However, they failed to recognize the exception to the held away from home terminal rule terminates pay under that rule at the time ordered to deadhead under the deadheading rule, not vice versa.

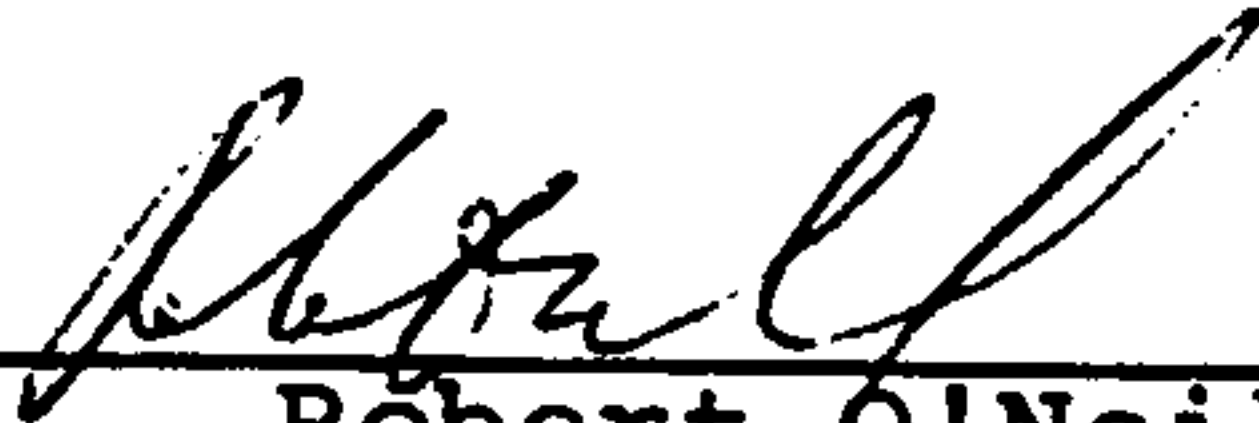
The established rule of contract construction holds that if a contract is susceptible to alternative constructions, one that would lead to a reasonable or sensible result and the other to an obscured or ridiculous result, the contract must be construed in light of the former. The Board majority ignored this rule as set forth in 1st Div. A-7454 (Mabry) 2nd Div. A-1321 (Donaldson), 3rd Div. A-15011 (Wolf) and 4th Div. A-1224 (Coburn).

As this Award is in error, I dissent.

This Award will not be considered a precedent.

10/29/87

Date



Robert O'Neill