

**PUBLIC LAW BOARD NO. 6531**

**PARTIES TO DISPUTE:**

UNITED TRANSPORTATION UNION  
(EASTERN DISTRICT)

Case No. 6  
Award No. 6

VS

UNION PACIFIC RAILROAD CO.

**QUESTION AT ISSUE:** In accordance with the provisions of the Modified Crew Consist Agreement dated December 19, 1991, is a necessary double-over, while picking up or setting out between terminals, considered a single work event in conductor-only operations?

**FINDINGS:** This Board, upon the whole record and all of the evidence, finds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

**OPINION OF THE BOARD:** The question before the Board involves the application and interpretation of the parties' December 19, 1991 Crew Consist Modification Agreement. This Agreement was an adaptation of nationally negotiated language on the subject of conductor-only crews.

One of the negotiated restrictions on the Carrier's ability to utilize conductor-only crews was that the train would be limited to "No more than three work events." See Article I, Section 3(b). Section 3(b) went further in defining work events in three subsections as follows:

- (i) A work event is considered to be a straight pick-up or set-out.
- (ii) Picking up, setting out, or exchanging one or more locomotives and setting out a bad order car shall not be considered an event.
- (iii) Work performed in the initial and/or final terminals will be governed by applicable rules.

The question before the Board involves Subsection (I) of Section 3(b) Article I in that the parties differ as to what constitutes a “straight pick-up” or “set-out.” There is no dispute that apart from the Agreement language in the dispute presently before the Board the phrase “straight pick up or set out” has been consistently applied on this property and throughout the railroad industry to allow any necessary double-overs when a track was of insufficient length to hold the cars being picked up or set out. More specifically, such a move would count only as one work event.

The issue here is whether these parties negotiated an exception to this industry-wide interpretation. The organization contends the parties did negotiate a further restriction in Notes 1 and 2 which immediately follow Section 3(b)(i)(ii) and (iii) in Article I. It reads as follows:

**NOTE 1:** Each type of move, pick up or set out will be considered as separate work events for the purpose of application of this Agreement. Thus a pick up and set out at an intermediate point will count as two work events. Hanging onto cars already in the train in order to make a pick up or set out is permissible under this agreement.

Pick up or set out as referred to above means straight pick up of a car or cars coupled together and first out that go together in one place in the train; set out means straight set out of a car or cars coupled together in the train that are set out in one movement. This note applies only to Conductor/foreman operations and does not restrict crews with brakemen/helpers.

**NOTE 2:** Crews transported or deadheaded from their initial terminal to a point en route to pick up a train shall not be considered as having performed a work event, if the train is received with locomotives attached and no picking up or setting out is required other than doubling the train, if the track where the train was yarded was not of sufficient length to hold the entire train, and the coupling of a train, if it had been necessary in cut road crossings.

Crews who set out a train en route and are deadheaded or transported to the final terminal shall not be considered as having performed a work event en route if the locomotives remain attached to the train and no other work is performed other than doubling the train over to another track if the track on which the train is yarded is not of sufficient length to hold the entire train and the cutting of crossings if necessary.

The intent of this language is not to expand upon the work that a crew can perform en route.


They argue that the language contained in Article I, Note 1 places additional restrictions on work events that are not contained in any other crew consist agreement in effect on Union Pacific. When the restrictive language contained within Note 1 is applied to the phrase "straight pick up or set out" in Article I(b)(ii), the Union contends it is clear that it was the intent of the parties to define a single work event as a set out of cars coupled together in the train that are set out in one movement. It is also evident that when a double-over is made (necessary or not), the cars do not remain coupled together, and the double-over requires additional movements. Regarding "Note 2," it is the position of the Organization that it is clearly evident that had the parties intended to accept the standard industry interpretation of the phrase "straight set out or pick up," it would not have been necessary for the parties to place Note 1 or Note 2 into the agreement.

It is the Carrier's position a straight pick up or set out in road service also includes a necessary double-over and is counted only as one (1) event. They do not believe, based on the written statement of the Carrier's chief negotiator, that Notes 1 or 2 were intended to create an exception wide custom and practice. Indeed, they draw attention to the fact that this is the universal interpretation of the applicable language on the other component parts of the UP property (which have similar language). Moreover, they note this exact dispute has already been resolved on this property involving the former UTU Missouri Pacific Upper Lines (MPUL) Modified Crew Consist Agreement dated December 16, 1991, in *Award No. 1 of Public Law Board No. 5270 (UTU v UP)*.

After considering the argument of the parties, the Board must agree with the Carrier. While the language of Notes 1 and 2 are susceptible to the interpretation advanced by the Union, it is not clear enough (in the Board's opinion) to turn accepted practice on this property and the industry as a whole on its head.

**AWARD**

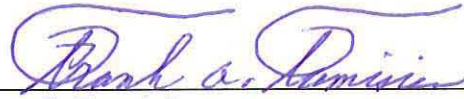
The question is answered in the affirmative as set forth in the opinion.



Gil Vernon, Neutral Member



Dean Hazlett  
Union Member



Frank Tamisiea  
Company Member

Dated this 15<sup>th</sup> day of November, 2004.