



March 4, 2009

TO: LOCAL CHAIRPERSONS & VICE LOCAL CHAIRPERSONS
FROM: JOHN C. HANCOCK
RE: Crew Consist & Converted Remote Control Assignments

Given the current shortage of qualified remote control operators – since most certified RCOs are on the street – the Carrier has taken to calling yard extra jobs to supplant assigned RCO jobs it is forced to annul when a crew member marks off or the position is vacant. We have received a number of questions regarding the propriety of calling these extras as foreman-only assignments when the job for which they are substituting has both and RCO foreman and switchman.

Based on the 1998 decision in Public Law Board 4975, Award 87, the Carrier is within its rights to call extra yard jobs as conductor only. In that case, switchman Y.R. Hayes had filed a claim for (8) hours' pay – \$95.49 at the time! – account the Carrier had called a yard extra Y350. The claimant contended that the switchman position was a must-fill position.

The Organization held that the Crew Consist agreement applied only to “established assignments”, not extra service. The Carrier argued that the agreement did not have specific language limiting management's right to fill extra assignments, therefore it was within its rights to work such jobs with only a foreman. Neutral Robert O. Harris agreed with the Carrier.

The Organization also argued that the “doctrine of laches” – a sort of “statute of limitations” on the exercise of one's rights – applied, since the Carrier had been utilizing switchmen on extra assignments for some time after implementation of the Crew Consist agreement. Neutral Harris responded:

*Where, as here, the right of the carrier to utilize two-person crews is part of their managerial discretion, the doctrine of laches does not apply.**

What is not permissible, however, is for the Carrier to simply convert the assignment by adding an engineer and leaving the foreman working the ground alone alone. Even on a converted job, the switchman's assignment – if one is advertised – is must-fill.

* To see the full text of the award and the dissenting opinion by then-General Chairman Mitchell Currie, visit the National Mediation Board “Knowledge Store” on the Internet and search using the PLB and Award numbers: 4975 and 87. The URL for the NMB is www.nmb.gov; then click on “Knowledge Store”.

It is also not permissible to annul an assignment and then use a member of the regular assigned crew to fill the extra job without going through the established calling procedure. In other words, if the assigned switchman on RCO job Y190 marks off and there is no qualified RCO on the extra board to fill the position, the Carrier can annul Y190 and call a Y150 with an engineer and a foreman only. The foreman, however, must be called from the extra board of jurisdiction and, if none is available, the calling procedure must be followed.

- If the Carrier uses a regular assigned member of the RCO job as the foreman on the extra, that individual is due the annulment of the RCO job plus the time ticket for the actual start on the extra, i.e., two days' pay.
- In addition, a runaround claim would be due the first-out extra board switchman, who should have been called to fill the extra foreman's position.

Please make sure that our members are vigilant in policing their agreement and that the appropriate claims are pursued in case of agreement violations. We have learned that when the Carrier turns a deaf ear to our complaints, the sound of money will often get their attention!