

**PUBLIC LAW BOARD NO. 7433**

**Case No. 3  
Award No. 3**

**United Transportation Union** )  
 )  
 **vs** ) **PARTIES TO DISPUTE**  
 )  
**Burlington Northern Santa Fe Railway Company** )

**STATEMENT OF CLAIM**

**Claim one ex. Days pay at Independent Herder rate. On 9-20-07 at 11:30 hrs. TM Coppole had this man on job 512 make a hand list of track 407 a total of 81 cars for the TM and others to work by. This man on job 512 did not use the list in his duties. This list should have been made by a clerk or the other TM on duty.**

**FINDINGS**

**This Board finds the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due and proper notice of hearing thereon.**

**On September 20, 2007 Claimant was assigned to the first shift Independent Herder position at Bakersfield, CA. At approximately 1130 on that date, the Claimant was required to make a list of the 81 cars sitting on Track 407 in order to verify that the cars designated for the MBAKBAR were on that track. As a result of being asked to perform this task, this Claim was submitted.**

**The Organization takes the position that because the Claimant did not handle any of the cars checked, the work did not belong to the Claimant.**

**The record is void of any evidence that any other employee has claimed the work.**

**The Carrier argues that the work was incidental to the Claimant's assignment, and that the 1985 Agreement allows the Carrier to require employees to do this type work without additional compensation.**

**The Agreement reads in part:**

**Section 3 - Incidental Work**

- (a) Road and yard employees in ground service and qualified**

**engine service employees may perform the following items of work in connection with their own assignments without additional compensation:**

- (7) Prepare reports while under pay**
- (8) Use communication devices; copy and handle train orders, clearances and/or other messages.**

**x x x x x x x**

**This refers to Article VIII - Road, Yard and Incidental Work - of the Agreement of this date.**

**This confirms the understanding that the provisions in Section 3 thereof, concerning incidental work, are intended to remove any existing restrictions upon the use of employees represented by the UTU to perform the described categories of work and to remove any existing requirements that such employees, if used to perform the work, be paid an arbitrary or penalty amount over and above the normal compensation for their assignment. Such provisions are not intended to infringe on the work rights of another craft as established on any railroad.**

**The Carrier also cites PLB 6031, Award No. 6 to buttress its position. The facts are similar to this case, the parties are the same, and the Claim was denied. It reads in part:**

**The Board has carefully considered this issue and notes that the Agreements reviewed at Barstow include specific language applicable to these instant facts. The central dispute clearly revolves around Section 3 of Article VIII of the October 31, 1985 National Agreement which states in pertinent part:**

**Section 3 - Incidental Work**

- (a) ...employees may perform the following items of work in connection with their own assignments without additional compensation.**

**Clearly, the issue is joined as to whether the work performed herein represented work which was "in connection with" the Claimant's own assignment. If it was, then under the language of Section 3, it requires no additional compensation.**

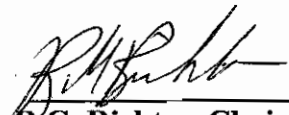
**There is nothing presented by the Organization in its on-property record to support the position that this was not in connection with the Claimant's own assignment. The Organization has failed to demonstrate or provide any evidence whatsoever that a Herder Bleeder position at Barstow would not have been performing work for which checking a list of track was not incidental. The parties have presented this Board with the full Agreements,**

which are always before us for consideration. Herder Bleeders on this property go out and bleed cars. There is no proof in this record that checking a list in connection with bleeding cars violates any of the provisions disputed. We find the Agreements pertaining to Yardmen at Barstow to be unique. Based upon the full record, the Organization has not met its burden of proof.


The Organization has not produced any argument that makes the Award palpably erroneous and should be ignored.

**AWARD**

**Claim denied.**

  
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**R.G. Richter, Chairman**  
**Neutral Member**

  
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**D.L. Young**  
**Organization Member**

  
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**Gene L. Shire**  
**Carrier Member**

Dated March 29, 2011