

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24294
Docket No. 44009
93-1-U-1722

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(
(Union Pacific Company (former Missouri
(Pacific-Upper Lines)

STATEMENT OF CLAIM:

"Claim of Engineer L.J. McEntire, dated May 6, 1989, for four (4) hours final terminal delay while working in road freight service on date of claim."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Local Chairman appealed the instant claim to the Manager of Labor Relations on June 23, 1989 stating:

"Claimant was in through freight service on date of claim. He was working the SFYES-05 train. Upon arrival in St. Louis the trains were lined up waiting to get into the A&S yard. Claimant was the 4th train in the lineup behind the MKT 208 who was behind the UP 2477 who was behind the DRGW 3151. The DRGW 3151 was at the arrival point (A&S Turnout) at the time the claimant stopped behind these 3 trains. The agreement allows for FTD payment when arriving behind a preceding train that is at the arrival point. This is what has happened in this case."

The Manager of Labor Relations declined the claim for Final Terminal Delay because "Claimants were properly paid in accordance

with the 1985 and 1986 National Agreements. The Regional Director Labor Relations declaration dated January 2, 1993 stated:

Claimant was 4th train out going into the A&S - this train was not preceded by a train that had arrived at the final arrival point and had gone on final delay.

The Carrier's assertions that the Organization has not met its burden of proof is totally devoid of merit. The facts asserted in the June 23, 1989 appeal were not challenged on the property. The Carrier's declination on the property dealt with the application of Article V, Section 1 of the National Agreement dated May 19, 1986 and the May 19, 1989 side letter. The Carrier never asserted that the Claimant's train was not stopped between the last siding or station and the point where final terminal delay (FTD) begins, or that vital information on the other trains involved was missing, and other matters. The issue joined on the property was one of contractual interpretation and this matter is now properly before this Board.

In the published Discussions and Findings of Arbitration Board No. 458 which accompanied the agreement, Section B - Work Rule Amendments, Subsection 3, final terminal delay (FTD) is discussed. It stated in part:

"In their tentative agreement, the parties exhibited a desire to establish, through arbitration, a uniform national definition of the point at which FTD would commence. The Board believes such a rule would serve the interests of both the carriers and the organization. Engineers working under separate contracts would be placed on the same footing. The burdens now placed on certain railroads by local FTD rules that are more restrictive than those existing on other railroads would be removed, facilitating their ability to compete. These considerations have convinced this Board that a national FTD rule is appropriate and should be included in our Award.

In fashioning such a rule, we begin by recognizing the underlying purpose of the rule, namely the encouragement of prompt yarding of trains arriving at their final terminal yards. Thus, as a logical matter FTD should not commence until the train arrives at the switch, or signal governing same, used in entering the yard where the train is to be left or yarded. Under such a formulation the concern addressed by the rule, avoidance of undue delay in the yarding of trains due to unnecessary yard delays, would be served. Based on our review of the record, such

a rule would not be a radical break with existing practice. The carriers have produced evidence indicating that (i) a majority of agreements covering a majority of employees provide that FTD shall begin either at the main track switch to the yard or the switch to the track where the train is to be left; and (ii) almost 75 percent of all crew trips have FTD points located within a mile of such switches.

Accordingly, the tentative settlement's FTD provision is amended to provide that FTD shall be computed from the time engine reaches the switch, or signal governing same, used in entering final terminal yard where train is to be left or yarded until finally relieved from duty, provided, that if a train is deliberately delayed (as defined in a letter attachment) between the last siding or station and such switch or signal, the time held at such point will be added to any time calculated as FTD. The grace period shall remain at 60 minutes as provided in the tentative settlement." (Emphasis added)

Article V, Section 1, of the National Agreement dated May 19, 1986, dealing with final terminal delay states:

"ARTICLE V - FINAL TERMINAL DELAY, FREIGHT SERVICE

"Section 1 - Computation of Time

"In freight service all time, in excess of 60 minutes, computed from the time engine reaches switch, or signal governing same, used in entering final terminal yard where train is to be left or yarded until finally relieved from duty, shall be paid for as final terminal delay; provided, that if a train is deliberately delayed between the last siding or station and such switch or signal, the time held at such point will be added to any time calculated as final terminal delay." (Emphasis added)

Side Letter #3A dated May 19, 1986 sets forth the understanding reached by the parties in respect to the terms "deliberately delayed" in Section 1 of Article V of this agreement of May 19, 1986:

"This refers to Article V of the Agreement of this date concerning the final terminal delay rule, particularly our understanding with respect to the use of the term "deliberately delayed" in Section 1 of that Article.

During the discussions that led to our Agreement, you expressed concerns with situations where a crew was instructed to stop and was held outside the terminal between the last siding or station and the point where final terminal delay begins and there was not operational impediment to the crew bringing its train into the terminal; i.e., the train was deliberately delayed by yard supervision. Accordingly, we agreed that Section 1 would comprehend such situations.

On the other hand, the carriers were concerned that the term "deliberately delayed" not be construed in such a manner as to include time when crews were held between the last siding or station and the point where final terminal delay begins because of typical railroad operations, emergency conditions, or appropriate managerial decisions. A number of examples were cited including, among others, situations where a train is stopped: to allow another train to run around it; for a crew to check for hot boxes or defective equipment; for a crew to switch a plant; at a red signal (except if stopped because of a preceding train which has arrived a final terminal delay point and is on final terminal time, the time of such delay by the crew so stopped will be calculated as final terminal delay); because of track or signal maintenance or construction work; to allow an outbound train to come out of the yard; and because of a derailment inside the yard which prevents the train from being yarded on the desired track, e.g., the receiving track. We agreed that Section 1 did not comprehend such conditions."

The Claimant was working the SFYES-05 train, and upon arrival at St. Louis trains were lined up waiting to get into the A&S yard. The Claimant was the fourth train in the line up. The DRGW 3151 was at the arrival point of the final terminal (A&S Turnout) at the time the Claimant was stopped behind these three trains. The UP #2477 was second in line to enter the yard followed by MKT 208.

Referencing part of Article V, Section 1 of the May 19, 1986 National Agreement, we find that the Claimant's train, SFYES-05, was a train delayed between the last siding or station and the point where final terminal delay begins. Referring to Side Letter 3A, on the parties' understanding of the terms "deliberately delayed", paragraphs 2 and 3, we focus on the following language:

"...at a red signal (except if stopped because of a preceding train which has arrived at final terminal delay point and is on final terminal time, the time of such

delay by the crew stopped will be calculated as final terminal delay)..."

We find that the Claimant's train, SFYES-05, was stopped because of a preceding train which had arrived at the final terminal delay point (the A&S Turnout) and was on final terminal time, that is the DRGW 3151 train. Two other trains were also stopped because of the DRGW 3151 train was at the arrival point of the final terminal and was not being allowed into the yard by supervision.

The previously quoted language from Side Letter #3A above does not contain the language "(except if stopped because of a [immediately] preceding train...)". To add the word "immediately" would be beyond the authority of this Board.

The Carrier states:

"In the instant case if the DRGW 3151 had arrived at the final arrival point and was on final terminal delay, then only the second out train, the UP 2477, which was immediately following it, may have been entitled to final terminal delay but certainly not the third or fourth out trains. These trains were not immediately behind a preceding train which had arrived at the final arrival point and was on final delay." (Carrier's submission page 10.)

As stated previously, the agreement of the parties makes no reference to an "immediately" preceding train or other equivalent language. The Carrier's position must be rejected as lacking agreement support. Moreover, in the Discussions and Findings of Arbitration Board No. 458, the underlying purpose of the FTD rule is set forth which is to encourage the prompt yarding of trains arriving at their final terminal yards. If FTD time is due a train crew held up at the arrival point, and FTD time is due a crew immediately behind the train crew held up at the arrival point and this is because the possibility that FTD time will lead to FTD pay, and will thus encourage Carriers to make every effort to promptly yard trains in order to avoid the FTD pay, the same policy appears equally applicable to third and fourth trains being held up at the arrival point between the last siding or station and the arrival point.

While the Organization argues it is absurd, we are in agreement with the Carrier that the rule provides only for the time the train is stopped to be counted as delay time and not any running time between the point so stopped and the final terminal arrival point. The Carrier may make an offset for the running time in question.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 18th day of March 1994.