

## NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

Award No. 24295

Docket No. 43921

94-1-93-1-C-4596

The First Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers  
(  
(Chicago and North Western Transportation  
(Company

STATEMENT OF CLAIM:

"Engineer O.R. Bjelde, Central Seniority District No. 5, Mankato, Minnesota requests that he be compensated 8.0 hours at yard rate for dates of January 2, 3, 6, 7, 8, 9, 10, 14 and 15, 1992. Claimant was assigned to WMK05 at Mankato. On each claim date upon taking up service at the Mankato diesel house, Claimant was required by the Yardmaster to operate the engine from the diesel house through the yard to the Yard Office lining all switches positioned against his movement. The Conductor/Foreman remained at the Mankato Yard Office during this entire procedure. Carrier maintained they did not have to place the Conductor/Foreman on the engine for this move and that the engineer could line all the switches under Arbitration Award 458, Article VIII, Section 3.

We also have many additional claims in BLE Case 92-295 in behalf of Engineers Bjelde, Boeck, Carnahan, Rieger, Hess and Kaderlik. These engineers are also requesting payment of an additional eight (8) hours at yard rate for each claim date when required to handle switches while Conductor/Foreman was assigned to the job and available in the Yard Office to perform the job functions normally protected by employees of his craft."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 were given due notice of hearing thereon.

At the outset, we note that certain arguments and materials have been advanced to this Board by the Carrier that were not raised on the property. Accordingly, we will restrict our consideration of this case to the issues which were properly progressed on the property prior to the submission of the matter to the Board.

This claim was triggered on February 10, 1992, when the Organization wrote a claim letter to the Carrier asserting that the Carrier improperly assigned additional duties of "directing the engines, handling switches, etc." to its Engineers. The Organization contends that such work is outside of the scope of Arbitration Award 458, Article VIII, Section 3, Incidental Work which reads:

"Section 3 - Incidental Work

Road and yard employees in engine service and qualified ground service employees may perform the following items of work in connection with their own assignment without additional compensation:

- (a) Handle switches
- (b) Move, turn, spot and fuel locomotives
- (c) Supply locomotive except for heavy equipment and supplies generally placed on locomotives by employees of other crafts.
- (d) Inspect locomotives
- (e) Start or shut down locomotives
- (f) Make head-end air tests
- (g) Prepare reports while under pay
- (h) Use communication devices; copy and handle train orders, clearances and/or other messages
- (i) Any duties formerly performed by firemen."

We agree with the Organization in this matter. Certainly, pursuant to Section 3, Incidental Work, the Engineers may be required to handle switches, doing work incidental to his train.

However, this is not an unrestricted right on the part of the Carrier because the parties in Side Letter No. 7 (dated May 19, 1986) to the May 19, 1986 Agreement agreed to certain qualifying language which specifically addressed Section 3, Incidental Work. In pertinent part that letter reads:

"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 BLE 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 upon the work rights of another craft as established on any railroad.

It is further understood that paragraphs (a) and (c) of Section 3 do not contemplate that the engineer will perform such incidental work when other members of the crew are present and available." (Emphasis added.)

Therefore, Side Letter No. 7 carves out a key exception pertinent to this dispute. Specifically, the phrase "...present and available..." makes clear that the duties do not devolve upon engineers when others are available to perform them. The remaining question to be resolved is whether the conductor represents another crew member "present and available" to do the work. However, while this question has been put forward, the Board finds that it is not necessary and that it will not interpret the "present and available" language. What specific evidence must be produced to negate that language is not at issue because the Carrier, at no time on the property, refuted the Organization's continued position that the Conductor was "present and available." Therefore, on that basis, we sustain the claim.

A W A R D

Claim sustained.

Form 1  
Page 4

Award No. 24295  
Docket No. 43921  
94-1-93-1-C-4596

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

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

Dated at Chicago, Illinois, this 15th day of April 1994.