

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24830

Docket No. 44455

97-1-95-1-U-1853

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

STATEMENT OF CLAIM:

“This is the claim of Engineer R. L. Griffith for a basic day account violation of Article 4, Section K, of the Schedule Agreement because he was called for short turnaround service, and made three trips out of the terminal and back for a total of one-hundred-forty-six (146) miles.”

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 were given due notice of hearing thereon.

The appropriate Claimant in this case is Engineer J. J. Genova, not Engineer R. L. Griffith, as noted in the statement of claim.

On August 29, 1994, Claimant, a freight service Engineer, was called to perform hours of service relief (dogcatch service). Throughout the course of the day, Claimant

retrieved three separate trains that went dead short of the terminal at Horace, Kansas. The trips were as follows:

| <u>"Location</u> | <u>One Way</u> | <u>Round Trip</u> |
|------------------|----------------|-------------------|
| Walkingwood | 9.7 | 19.4 |
| Stuart | 21.7 | 43.4 |
| Chivington | 41 | 82" |

On August 29, 1994, Engineer J. J. Genova filed a claim for a basic day of 126 miles. The claim was denied at all levels and has been placed before this Board for adjudication.

The Organization bases its claim on Article 4, Section K, of the Schedule Agreement. That Rule reads as follows:

"ARTICLE IV

Section K.

Engineers in pool or irregular freight service may be called to make short trips and turnarounds with the understanding that one or more turnaround trips may be started out of the same terminal and paid actual miles with a minimum of 100 miles for a day, provided, (1) that the mileage of all the trips does not exceed 100 miles, (2) that the distance run from the terminal to the turning point does not exceed 25 miles, and (3) that engineers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, except as a new day, subject to the first-in, first-out rule or practice."

The Organization contends that Claimant was called under Article IV, Section K, and the terms of that article apply to his assignment on the day in question. It argues that since one of his trips (Chivington) was more than 25 miles one way and his total miles for the day were more than 100, Carrier violated the Agreement in assigning Claimant. A penalty day's pay is appropriate as payment in this case.

Carrier argues that Claimant was not called under Article 4, Section K, but was called to perform hours of service relief or "dogcatch" service. He was not called to make short trips or turnarounds. He was called to perform dogcatch work. Claimant knew when he was called what service he was to perform. He knew he would be required to retrieve three trains and that the job would last all day. Carrier also argues that the Agreement involved in this case does not contain an automatic terminal release rule. Claimant could legitimately be required to make three dogcatches without any penalty payment.

This Board has thoroughly reviewed the record and the numerous prior Awards submitted in support of the parties' respective positions. As a result of that review, it is this Board's conclusion that the more reasoned and applicable awards support Carrier's position. Article IV, Section K, of the Schedule Agreement cited by the Organization does not apply to the service performed by Claimant in this instance. The Organization has failed to present any arguments that restrict Carrier from assigning Claimant as it did. It has failed to carry its burden of proof in this instance and the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 9th day of September 1997.