Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24856
Docket No. 44544
97-1-96-1-B-2112

The First Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Burlington Northern Santa Fe Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of various engineers requesting payment of a basic day at the applicable rate in addition to any other earnings on the dates listed account after arrival at the final terminal claimants were required to perform various moves including the initial terminal air test for the outbound crew."

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.

This matter involves twenty-one claims arising out of nineteen incidents. In sixteen such incidents Claimants, upon arrival at their final terminal, Aberdeen, South Dakota, after yarding their trains, were required to remove the locomotive consist, proceed to another location, add or subtract locomotives from the consist, return to the train, attach the consist for the outbound train, and perform an air test. In two

incidents, Claimants were required to place outbound power on a train at the initial terminal and then take another train on their assigned road trips.

The Organization contends that Carrier violated the 1986 Agreement, implementing Arbitration Award 458, which provides, in Article VIII, Section 3:

> "Road and yard employees in engine service and qualified ground service employees may perform the following items of work in connection with their own assignments without additional compensation:
>
> .....
>
> (b) Move, turn, spot and fuel locomotives
>
> .....
>
> (f) Make head end air tests . . ."

The Organization maintains that none of the work at issue was in connection with the Claimants' own assignments. It urges that Carrier's interpretation reads this language completely out of the rule.

Carrier contends that the work was authorized by Section 3 of the 1986 Agreement. Carrier argues that the term "in connection with their own assignments" is broader than the term "in connection with its own train" used in Article V, Section 1 of the 1971 Agreement and was intended to give Carrier broader flexibility in using road crews. Carrier urges that as long as it assigns the enumerated work to the employees, the work is in connection with the employees' own assignments. Carrier also contends that one of the claims is so vague and indecipherable, that the Organization has failed to carry its burden of proof.

The instant case turns on the interpretation of the term, "in connection with their own assignments," in Section 3 of the 1986 Agreement. Carrier's interpretation is highly problematic. Carrier contends that as long as it assigns specified duties to an employee, those duties are in connection with the employee's own assignment. In other words, Carrier's interpretation gives it complete authority to define and change the employee's assignment from minute to minute. Such an interpretation strips the term.

"in connection with their own assignments" of any meaning. The term is used in Section 3 as a term of limitation. However, under Carrier's interpretation, there is no limitation on what Carrier may require an employee to do without additional compensation. If that were the intended meaning of Section 3, then there would be no need to qualify it with the term, "in connection with their own assignments."

Question and Answer 3, in connection with Arbitration Award 458, provides:

"Q-3: Can a road engineer be required to make a head-end air test on a train other than the train called to operate from the terminal?

A-3: No, unless the other train is in connection with his own assignment."

This question and answer make it clear that the words "in connection with their own assignments" were intended to be words of limitation. Carrier fails to suggest any interpretation of this language that would allow it to require the activities it required of the Claimants but still retain its function as a limitation on what can be required without additional compensation.[1]

Our interpretation that the activities required of the Claimants were not in connection with their own assignments is consistent with the majority of the awards interpreting Section 3 that we have been asked to consider. See, e.g., Special Adjustment Board 18, Decision No. 5978; Public Law Board 4069, Award No. 44; Public Law Board 5907, Awards Nos. 3, 4,5,6; Public Law Board 4975, Awards Nos. 34, 81. We recognize that there are awards which reach a contrary result. See, e.g., Public Law Board 4520, Award No. 8; Public Law Board 5011, Award No. 3; Public Law Board No. 4269, Award No. 186; Public Law Board 5407, Award No. 9. These awards, however, suffer from the same flaw as Carrier's argument. Although they assert that the activities required of the claimants involved were "in connection with their own assignments," they fail to define that term in any manner that gives meaning to those words as words of limitation.

---

[1] In contrast, the Organization contends that Carrier obtained increased flexibility through Section 3 by adding items, such as performance of head end air tests, to the list of activities that Carrier could require without additional compensation.

Carrier attacks the claim of Claimant Keuseman for 9/17/94 as vague and indecipherable. Carrier urges that there is no way to determine the basis of the claim from the time slips or Train Activity Delay Report. We have examined the claim and we agree. Accordingly, that claim will be dismissed. All other claims will be sustained.

AWARD

All Claims except that of Claimant Keuseman (9/17/94) sustained. Claim of Claimant Keuseman dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 23rd day of October 1997.