

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24941
Docket No. 44619
98-1-97-1-U-1937

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 Railroad)

STATEMENT OF CLAIM:

"Claim of Engineer D.L. Camp, TS #28A, dated March 28, 1995, for one basic day account being used to dog catch while assigned in the RE 10 pool."

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.

Claimant D. L. Camp was regularly assigned as an Engineer in pool freight service between Mineola, Texas and Texarkana. On March 28, 1995, he was called at Mineola as Engineer on Train FWTX-28. Upon arrival at the on-duty point, Claimant was advised that Train MEFW running between North Little Rock and Mineola was tied up on line of road at Big Sandy, Texas. He was relieved of his original assignment on FWTX-28 and deadheaded to Big Sandy to bring Train MEFW back to Mineola.

Claimant was on duty one hour and thirty minutes and was allowed 130 miles for this service. He submitted a time slip for the job worked and a non-service penalty time slip for a basic day. He contends that he was used out of his assigned pool and that the work should have been performed by an Extra Board Engineer.

In its declination letter on the property of this claim, Carrier agreed that Claimant should not have been used to "dog catch" Train MEFW. It declines the claim, however, on the basis that the Organization has not perfected its claim to the point that it demonstrated that an Extra Board Engineer was available to be called to perform the duty assigned to Claimant. It argues that even if an Extra Board Engineer were identified, that Engineer would be the proper Claimant, not D. L. Camp.

This Board has reviewed the record and is persuaded that the Organization has not carried its burden of proof in this instance. No facts were submitted in the record to demonstrate that an Extra Board Engineer was available or was not available to perform the service in question. The lack of facts on this point weigh against the Organization, which carries the burden of proof in this case.

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 17th day of September 1998.