

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24943
Docket No. 44621
98-1-97-1-U 1943

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 Company)

STATEMENT OF CLAIM:

"Claim of Engineer R.G. Woodard, TS #2A, dated May 6, 1995, for 100 miles account being used to dog catch the LIHOB-05, which is not I.D. service work per agreement."

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 R. G. Woodard was regularly assigned as Engineer in Houston to Livonia ID pool service. On May 6, 1995, he was called at Livonia, his away from home terminal, to dead head to Hull and pick up train LIHOB-05, which had been stopped under the Hours of Service Law, and operate it to Houston where he went off duty. Having performed this service, Claimant submitted a time slip for 130 miles basic day account improperly called for Hours of Service relief. The claim was denied by Carrier and has been placed before this Board for resolution.

The Organization contends that Claimant was called at Livonia and dead headed to Hull, a location west of Amelia on the line of road. He then "dog caught" a train stopped there due to Hours of Service restrictions and took it on to Houston. This dog catch assignment accrues to the Extra Board at Houston and should not have been assigned to Claimant. The Organization relies on Section 9.h of the Terms and Conditions of Interdivisional Service Agreement signed by the parties on February 27, 1995. That Section reads as follows:

"Section 9. Turnaround Service/Hours of Service Relief.

The following shall govern when trains are heading to the following terminals:

(h) Houston - If west of Amelia, use Houston Extra Board, and if at Amelia or east of Amelia, use DeQuincy Extra Board to Houston and deadhead home."

It contends the Claimant was mishandled by being assigned "dog catch" work and consequently is due a penalty payment of a basic day as compensation.

Carrier contends it did not call the Claimant in "dog catch" service but in combined service to dead head from Livonia to Hull and advance a train from that point to Houston. It relies on Note 1 of Section 9 of the Livonia ID Agreement and Article VI of the 1986 BLE National Agreement. Note 1 reads as follows:

"Note 1: Nothing in Section 9 above prevents the use of other employees to perform work currently permitted by other agreements; i.e., yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads between terminals, TSEs handling trains within their zones."

Article VI reads in pertinent part: "Deadhead and service may be combined in any manner that traffic conditions require." Carrier also argues that the Organization did not carry its burden of proof. Claimant is not the proper Claimant if, in the final analysis, there was a Contract violation.

This Board has reviewed this record in detail. As a result of that review, we have concluded that the service performed by Claimant was (whether called by another name or not) dog catch service, as the term is used in this record and in the railroad industry in general. As such, this Board also concludes that Article 9, Section h, is the controlling language in this dispute. The Board interprets that language to mean that if a train headed for Houston is stopped under the Hours of Service Law west of Amelia, it will be retrieved by a Houston Extra Board dog catch crew. The language is clear and leaves nothing to interpretation. This is newly negotiated, very specific language that addresses which crews will perform Hours of Service relief work. It supersedes all general language contained in any agreements that might be interpreted to include dog catch work.

While this Board has generally taken the position that a penalty payment is not appropriate when an employee is mishandled but does not lose pay, we think in this instance that a penalty payment is in order to make the point that Carrier is required to adhere to the letter of the Contract.

AWARD

Claim sustained.

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 17th day of September 1998.