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**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24946
Docket No. 44648
98-1-97-1-U-1975

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

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claimant J.P. Powell claiming 130 miles due to fact violated Article 3 of the Agreement dated March 30, 1972 I.D. Service between Valley to Houston."

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 J. P. Powell is assigned as a Pool Engineer in the RE62 Pool. Normally, he runs from Fort Worth, Texas, to Taylor, Texas. On September 23, 1995, he was called at his away from home terminal of Taylor, Texas, to operate Train XLDCV-22 to Fort Worth. This train is classed as Inter Divisional Service. He went on duty at 4:15 P.M. and proceeded to operate the train to Fort Worth. When the train arrived at Valley Junction short of Fort Worth, Claimant was advised that Train FWMX-22 had

been tied up under the Hours of Service Law and was blocking the main line about thirteen miles north of Valley Junction. Claimant was instructed to leave his train at Valley Junction and be transported to mile post 113 and bring the train back to Valley Junction, thereby clearing the mainline for Claimant's train as well as others to proceed to Fort Worth. Claimant performed this service. When he returned with the train to Valley Junction, he boarded his train and operated it toward Fort Worth. As a result of this handling of Claimant, he submitted the following penalty claim for a basic day:

"Allow 130 miles acct of being on RE62 pool job (which is and I.D. run) and being used to dog-catch FWMX-22 at MP 113 out of Valley Jct (AX175). I was called on XLDCV-22 out of Taylor (AX226) and was instructed by disp GME to get in a limo at AX175 & transp to MP 113 to dogcatch FWMX-22 which is a violation of I.D. run agreement. Then get back on XLDCV-22 and go towards Ft. Worth (TP250). This is being mishandled by agreement."

The claim was denied at all levels and has been placed before this Board for resolution.

The Board has reviewed this case in detail and has concluded that the Organization's position is the more meritorious. Claimant was taken off his Engineer's assignment at Valley Junction while operating an Inter Divisional train between Taylor and Fort Worth. He was bused from Valley Junction to MP 113 to bring a train back to Valley Junction in order to clear the main line between Valley Junction and Fort Worth. He was then put back on his train and directed to proceed to Fort Worth. It is clear from this record that Claimant was used in an expeditious manner by Carrier. It did not have to call an Extra Crew to dogcatch the train that was blocking the main line. It used an Engineer who was on the job and in the vicinity. The Board, however, does not find any Contract support for Carrier's action. In fact, in Carrier's final declination letter (Carrier's ExG), it does not contest the fact that Claimant was mishandled, but only that the Agreement does not make allowances for a penalty payment under such conditions.

This Board has addressed the issue of penalty. It has concluded that there is sufficient precedent reflected in a large number of National Railroad Adjustment Board Awards on the subject to support the Organization's position in this case.

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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.