

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25146

Docket No. 44816

00-1-99-1-U-2078

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of Engineer T. L. Todd for one basic day account being mishandled in violation of Section 9 of the Livonia I.D. 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.

The Claimant was assigned to Interdivisional Service between North Little Rock, Arkansas and Monroe, Louisiana. On the claim date the Claimant was at his away-from-home terminal, Monroe, when he was called to deadhead to Pine Bluff, Arkansas, to pick up train MLINL-04 that was tied up under the Hours of Service Act. The February 27, 1995 Agreement providing the Interdivisional Service deals with the service performed by the Claimant. Section 9 paragraph (a) reads as follows:

Section 9. Turnaround Service/Hours of Service Relief

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

- (a) North Little Rock - North Little Rock Extra Board if past McGehee; if not, use combination service crew out of Monroe."

Pine Bluff is past McGehee.

The Carrier argues that Note 1 to Section 9 gives the Carrier the right to use the Claimant. The note reads:

"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, TSE's handling trains within their zones."

The Carrier used this argument in a similar case which was decided by First Division Award 24943. The Board held:

"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 the Carrier is required to adhere to the letter of the Contract."

We find no basis to differ from the above Award.

**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 13th day of July, 2000.