Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25175
Docket No. 44850
01-1-99-1-U-2096

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: (Union Pacific Railroad Company (former Chicago and Eastern Illinois Railroad Company)
(Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM:

"The Carrier properly compensated Engineer J. R. Ferrie [Claimant] under provisions of the Salem/St. Louis-Chicago Interdivisional Runs Agreement, including the guarantee provisions and Section 12, Question and Answer No. 9, for the pay periods of the last half of February, 1998 and the first and last halves of March, 1998."

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 Carrier, having listed these claims to the First Division, is the Petitioner in the instant case, which involves several issues relating to the administration of the February 28, 1995 Award of Arbitration Board No. 555, establishing Interdivisional service between St. Louis, Missouri, and Chicago, Illinois, and Salem, Illinois, and Chicago, Illinois. The issues are resolved as set forth below. The actual amounts owed

the Claimant are evident in the record before the Board and should not be in dispute once the policy matters at issue have been resolved by the Board.

I.

On February 17, 1998 at 8:30 P.M., the Claimant was called for a turnaround assignment at St. Louis, Missouri, off his regularly assigned St. Louis to Chicago ID Pool assignment. The St. Louis Engineers' Guaranteed Extra Board had rested and available engineers to staff this short turnaround assignment at 8:30 P.M. The Claimant was paid $271.98 for this service, and the Carrier used this amount as an off-set to his guarantee for the pay period.

The Award of Arbitration Board No. 553 expressly provides that earnings made when used in other than ID Service will not be counted as an off-set to the employee's guarantee payments:

"Question 8: Will an engineer assigned to ID pool service at either St. Louis or Salem be required to protect other service?

Answer 8: No, only in emergency such as a natural disaster or as provided in the agreement.

Question 9: If an ID pool engineer is used in other than ID service or turnaround service, will earnings made while off assignment be counted toward guarantee?

Answer 9: No." (Emphasis added)

The Carrier's Assistant Director of Labor Relations wrote a memo to the General Chairman and Timekeeping which relates to not offsetting non-ID earnings, the body of which memo stated in part:

> "The above list reflect claims filed pursuant to the Villa Grove ID Agreement made pursuant to Arbitration Award 553. Q&A #9 provides that non-ID earnings made by employes on the ID Board will not be used to offset the ID guarantee. For example, if an ID Board employee is called

to dog catch and makes $350.00 for the call, the $350 may not be counted toward the ID guarantee. The net effect is that the affected employee is entitled to his ID guarantee plus the payment of the non-ID earnings as penalty time. (Employee Exhibit M, page 11 of 11.)"

The Board finds that in situations of record involving non-ID earnings made by employees on the ID Board similar to those discussed in this case, such earnings should not be used to offset the ID guarantee.

II.

Section 9 of the Award of Arbitration Board No. 553 expressly provides that ID crews will not be used to perform Turnaround Service or Hours of Service Relief until all other sources of employees available for this work have been exhausted:

"Section 9. Turnaround Service/Hours of Service Relief. Crews assigned in this ID Service will not be used in either Turnaround service or Hours of Service Relief at Chicago (away-from-home terminal) and/or St. Louis/Salem (home terminal), except as provided below. Chicago Yard and/or yard GXB crews may be used in the road/yard zone (to M.P. 55). In addition, Villa Grove extra board (or pool if established) crews may be used for any road service between Villa Grove and Chicago.

Question 1: Should the above sources be exhausted, may ID crews be used in this service?

Answer 1: Yes; however, they will be deadheaded to the home terminal upon completion of the service."

A basic day penalty was filed for each date where the Claimant was used in other than ID service when employees from other primary sources of supply were available for the work in question. In order to enforce the plain language of the arbitrated Agreement we find that a basic day penalty is appropriate when an ID engineer was improperly used in non-ID service in direct violation of the arbitrated Agreement. The parties contemplated that sources of supply could be exhausted and emergencies could exist where an ID engineer could perform non-ID service without violating the arbitrated ID Agreement and they allowed that earnings from such service would not

be counted toward the guarantee. The Carrier argues that having paid the guarantee and paid for the service over and above the guarantee, such negotiated payments are all that is due, and there is absolutely no call for a basic day penalty.

We disagree with this view. No basic day penalty will apply when an ID engineer performs the non-ID service allowed under the arbitrated Agreement. It is only when the ID engineer is improperly used in non-ID service in direct violation of the arbitrated agreement that a basic day penalty shall apply.

For example, on March 11, 1998 at 12:40 A.M., the Claimant was tied up at his away from home terminal (Chicago) in ID Pool service and was called to perform Hours of Service Relief for train MPRPB-08 at Block, Illinois. The Claimant worked the Hours of Service Relief Assignment, Train MPRPB-08 from Block, Illinois, to tie-up at St. Louis, Missouri, on March 11, 1998. The Villa Grove Engineers' Guaranteed Extra Board had two engineers rested and available to perform this Hours of Service Relief at Block, Illinois. The Carrier defended its use of the Claimant on this Hours of Service Relief on March 11, 1998 by reference to NOTE 2 of Section 8(c) wherein ID crews may be deadheaded from terminal to terminal to begin service at the second terminal, i.e., "... (deadheading from Chicago to Villa Grove and taking a train from Villa Grove to Salem . . ." However, the Carrier's position is without merit because the Claimant was not deadheaded terminal to terminal as Block, Illinois, is an intermediate point rather than a terminal point. The Claimant shall be paid a basic day penalty payment for this date because he was improperly used in non-ID service in violation of the Agreement; and this pay for non-ID service shall not be used to offset his ID guarantee as per our decision in Part I above.

III.

On February 17, 1998, the Claimant was called for a turnaround assignment at St. Louis off of his regularly assigned St. Louis to Chicago ID Pool assignment while the St. Louis Guaranteed Extra Board had rested and available engineers to staff the turnaround assignment. The Claimant was paid $271.98 for this assignment as set forth previously in Part I of this Award. The Arbitrated Award, Section 9, Question and Answer 4 states:

"Question 4: If an engineer in this ID service at any terminal (home or far) is required to perform turnaround service or

hours of service relief, how will the engineer be compensated?

Answer 4: At the home terminal, a minimum of district miles for that pool (286 or 235 miles) and placed at the foot of the ID pool. . . .

At the far terminal, the actual miles run plus the separate and apart deadhead home will be added together. If less than the district miles for the pool then the district miles will be paid; if greater than the district miles then the greater amount will be paid."

On February 17, 1998, the Claimant should have been paid the full 286 district miles for a total of $338.58. He was actually paid $271.98. He is owed $66.60. We find that the Carrier cannot misuse an engineer in violation of the arbitrated Agreement, and pay him less than the express language that Agreement requires had he been properly used in the service in question. Thus, for February 17, 1998 the Claimant is entitled to receive an additional $66.60, plus a basic day penalty payment and such amounts shall not offset his ID pool guarantee.

We answer the question posed by the Carrier in progressing this matter to the Board as follows.

The Carrier did not properly compensate the Claimant under provisions of the Salem/St. Louis-Chicago Interdivisional Runs Agreement, including the guarantee provisions and Section 12, Question and Answer No. 9, for the pay periods of the last half of February 1998 and the first and last halves of March 1998. We believe that the principles set forth in this Award, coupled with the worksheets of record before the Board, will enable the parties to calculate the proper payments to the Claimant for the pay periods in question. Jurisdiction is maintained on the matter of remedy for one year from the date of this Award.

AWARD

Claim sustained in accordance with the Findings.

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 5th day of March, 2001.