Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25176
Docket No. 44851
01-1-99-1-U-2097

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 provisions of the Salem/St. Louis Chicago Interdivisional Runs Agreement, including the guarantee provisions and Section 12, Question and Answer No. 9, are not applicable to an extra board engineer, and as such, Engineer R. K. Reeder (Claimant) has no basis to claim the benefits of the guarantee provisions of such agreement for the trips made on March 10 & 12, 1998. Rather, as an extra board engineer, the Claimant is governed by the provisions of the extra board 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 Carrier's procedural contentions are without merit.

The Claimant, Engineer R. K. Reeder, was called from the Salem Engineers' Guaranteed Extra Board to work a vacancy on the RE-50 Pool, Salem, Illinois, to Chicago, Illinois, ID Pools created by the Award issued by the Arbitration Board No. 553. The Claimant was called to work with Conductor M. Martin who was regularly assigned to the ID Pool. They performed Hours of Service Relief on Train MNLYCX-08 at Clarksburg, Illinois, located at Mile Post (MP) 201 on the Chicago Subdivision. This location is not a "terminal" point on this territory.

Section 9 of Arbitration Board No. 553 expressly provides that crews assigned in this ID service will not be used in Hours of Service Relief until all other primary sources of employees available for this work have been exhausted; and the record indicates that the other primary sources of supply were not exhausted.

The Carrier violated the terms of the Arbitrated Agreement, Section 9, when it used a crew assigned to this ID Pool for Hours of Service Relief when employees from primary sources were available to perform this service. A basic day penalty is properly assessed for this Agreement violation. And, in accordance with the express language of Section 9, Question and Answer No. 1, the Carrier was responsible to deadhead the ID Pool crew to the home terminal upon completion of the service. In the instant case the Claimant was held in Chicago for some 16 hours and five minutes after his arrival, and was then required to perform service as the working Engineer on Train ZYCMQ-12. A basic day penalty is also properly assessed for this Agreement violation. The Claimant, an Extra Board employee, has the standing to properly claim both of these violations by virtue of his filling a vacancy in ID service. He was a member of a crew assigned "in this ID Service" under the language of Section 9 of the Arbitrated Agreement. And it goes without saying that these basic day penalty payments shall not be used in computing the Claimant's guarantee.

The Organization argues that both the payment received for Hours of Service Relief on March 10, 1998, and the earnings on March 12, 1998 for operating Train ZYCMQ-12 on March 12, 1998 rather than being deadheaded home upon arrival at the Chicago terminal, cannot be counted toward the Claimant's guarantee. We disagree. Section 12, Question and Answer 9 relates to the guarantee provisions of the ID Pool, not the guarantee provisions of the Guaranteed Extra Board Agreement under which the Claimant receives his guarantee.

We find that it is inappropriate in this appellate forum to pursue the question of whether or not the payments received for Hours of Service Relief on March 10, 1998 and earnings for operating train ZYCMQ-12 on March 12, 1998 should not be counted toward the Claimant's guarantee under the Guaranteed Extra Board Agreement dated March 28, 1989 and made applicable to the former C&EI Railroad property by letter dated June 6, 1996, because this was not the Organization's original theory nor does the record reflect that such a theory was developed in the handling on the property.

We answer the question posed by the Carrier as follows:

The guarantee provisions of the Salem/St. Louis - Chicago Interdivisional Runs Agreement and in particular Section 12, Question and Answer No. 9, are not applicable to an extra board engineer, and as such the Claimant has no basis to claim the benefits of this provision for the trips made on March 10 and 12, 1998. Under the Claimant's claims, he is entitled to two basic day penalty payments for the Carrier's violations of Section 9 of the Agreement, and they shall not be used in computing the Claimant's guarantee.

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.