Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25177
Docket No. 44852
01-1-99-1-U-2098

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:

"Section 12, Question and Answer No. 9 of the Salem/St. Louis - Chicago Interdivisional Runs Agreement does not prohibit the Carrier from considering the earnings of Engineer P. E. Coon (Claimant) on March 13 and 14, 1998 and April 9, 1998 when determining the semi-monthly guarantee due Claimant for the relevant time periods. The trips on such dates involved either deadheads or combination deadhead and service between the interdivisional terminals of Salem and Chicago."

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.

I.

The Claimant, P. E. Coon, was regularly assigned to the RE-50 Pool, which is Salem, Illinois, to Chicago, Illinois, ID Service Pool, established by the Award of Arbitration Board No. 553. On April 7, 1998 at 4:32 P.M., the Claimant was called to Salem, Illinois, to make a terminal to terminal deadhead from Salem, Illinois, to Chicago, Illinois. He tied up at Chicago and was taken to a motel to obtain rest. On April 9, 1998 at 12:45 A.M., the Claimant was called at Chicago to perform Hours of Service Relief on train MASGFX-07. The train MASGFX-07 had been overtaken by the Hours of Service Law at Beecher, Illinois, an intermediate point. The Claimant brought this train into the Chicago terminal, tying up at Chicago again at 5:50 P.M. on April 9, 1998. At 6:00 P.M. on April 9, 1998, the Claimant was called to deadhead from Chicago, Illinois, to Salem, Illinois.

We find that the Carrier violated Section 9 of Arbitration Award No. 553 when the Carrier used this ID crew for Hours of Service Law Relief when primary sources of supply were available for this service. A basic day penalty is due the Claimant for this violation which shall not be used in the calculation of his ID guarantee. And, the Claimant's earnings for the Hours of Service Relief on train MASGFX-07 shall not be used as an offset to his guaranteed payment as per Question and Answer 9. However, the terminal to terminal deadhead from Chicago to Salem on April 9 shall be counted toward his guarantee as per the plain and specific language of Section 12. Question and Answer 10.

The Organization seeks a basic day penalty because the Claimant was not immediately deadheaded home upon completion of this Hours of Service Relief service as required by Question and Answer 1 to Section 9 of Arbitration Award No. 553. The burden of proof is on the Organization regarding its assertions that Question and Answer 1 was violated. The word "immediately" is not used in Answer 1. More development of the Organization's position is needed in order for the Board to find that the Arbitrated Agreement was violated in this particular case.

II.

On March 13, 1998 at 6:45 A.M., the Claimant was called to make a terminal to terminal deadhead from Salem, Illinois, to Chicago, Illinois, and he tied up at Chicago at 11:20 A.M. As per the Carrier generated records, on March 14, 1998 at 7:45 A.M.,

the Claimant was called for an Hours of Service Relief Assignment at Chicago, Illinois, to relieve Train KVGPRX-10, bringing this train in from Grant Park at Mile Post 45 on the Chicago Subdivision to Chicago and tying up at that time. He was deadheaded home from Chicago to Salem later that date, terminal to terminal. The Carrier generated records indicate that the Carrier used this ID engineer for Hours of Service Law Relief when primary sources of supply were available for this service. A basic day penalty is due for this violation which shall not be used in the calculation of his ID guarantee. And, the Claimant's earnings for this Hours of Service Relief on Train KVGPRX-10 shall not be used as an offset to his guarantee payments as per Question and Answer 9. However, the terminal to terminal deadhead from Chicago to Salem shall be counted toward his guarantee as per the plain and specific language of Section 12, Question and Answer 10.

Under the very limited record before the Board in this particular case, we find that the Organization has not met its burden of proof regarding its assertion that a basic day is owed for violation of Question and Answer 1.

The parties presented opposing views as to what transpired regarding the March 1998 claim dates. The Board relied on the Carrier generated records in setting forth the limited facts stated above. The parties themselves have to utilize these records in adjusting the Claimant's pay for the March dates in question; and, if need be, they may seek assistance from the Claimant himself; and/or rely on primary records such as trip tickets or delay reports. The general principles set forth in this Award and in First Division Award (Docket Number 44850) as well as the principles set forth in First Division Awards 24943 and 25146 shall prevail.

III.

The above set forth determinations answer the Carrier's "Statement of Claim" in this case; and the claims as filed on behalf of the Claimant for April 9, 1998 and March 13 and 14, 1998.

AWARD

Claim sustained in accordance with the Findings.