

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25461

Docket No. 44940

03-1-00-1-U-2150

The First Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. Claim of Engineer J. Fitzgerald (318-44-9242) for \$612.28 account required to perform Hours of Service Relief North of Villa Grove, IL. on train ZMXYC-16 on May 18, 1998 and required to work train ZYCFW-19 on May 19, 1998 from Chicago, IL. back to Salem, IL while working a regularly assigned ID Pool (RE-50 - Salem/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer J. Fitzgerald to his home terminal (Salem) upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1138835 - Timekeeping Declination No. UI0618000 and UI0618001).
2. Claim of Engineer R. G. Donoho (361-44-9518) for \$771.37 account required to perform Hours of Service Relief North of Villa Grove, IL. on train MNLGF-21 on May 22, 1998 and required to work train ZYCMX-24 on May 24, 1998 from Chicago, IL. back to Salem, IL while working a regularly assigned ID Pool (RE-50 - Salem/Chicago ID Pool). Claim all

earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer R.G. Donoho to his home terminal (Salem) upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1138839 - Timekeeping Declination No. UI0618383 and UI0618384).

3. Claim of Engineer A. C. Alvis (330-66-9032) for \$626.86 account required to perform Hours of Service Relief North of Villa Grove, IL. on train MFIGFX-17 on May 22, 1998 and required to work train ZYCFW-23 on May 23, 1998 from Chicago, IL. back to Salem, IL while working a regularly assigned ID Pool (RE-50 - Salem/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer A.C. Alvis to his home terminal (Salem) upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1138865 - Timekeeping Declination No. UI0618122 and UI0618123).
4. Claim of Engineer S. H. Lowery (327-54-4751) for \$457.54 account required to perform Hours of Service Relief North of Villa Grove, IL. on train CZIWF-18 on March 20, 1998 and required to work train DH65-21 on March 21, 1998 from

Chicago, IL. back to Salem, IL while working a regularly assigned ID Pool (RE-50 - Salem/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer S.H. Lowery to his home terminal (Salem) immediately upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1138821 - Timekeeping Declination No. UI0618913 and UI0618914).

5. Claim of Engineer J. L. Jackson (319-34-9605) for \$663.80 account required to perform Hours of Service Relief North of Villa Grove, IL. on train CZIWF-19 on May 21, 1998 and required to work train DH31-23 on May 23, 1998 from Chicago, IL. back to St. Louis, MO. while working a regularly assigned ID Pool (RE-58 - St. Louis/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer J.L. Jackson to his home terminal (St. Louis) immediately upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1137815 - Timekeeping Declination No. UI0618141 and UI0618142).

6. Claim of Engineer T. E. Jourdan (327-44-9168) for \$614.28 account required to perform Hours of Service Relief North of

Villa Grove, IL. on train MFIGFX-17 on May 22, 1998 and required to work train ZYCHO-23 on May 23, 1998 from Chicago, IL. back to Salem, IL while working a regularly assigned ID Pool (RE-50 - Salem/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer T.E. Jourdan to his home terminal (Salem) upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1137820 - Timekeeping Declination No. UI0618888 and UI0618889).

7. Claim of Engineer J. S. Williams (409-80-9516) for \$841.55 account required to perform Hours of Service Relief North of Villa Grove, IL. on train CZIWF-26 on March 27, 1998 and required to work train MYCASX-29 on March 29, 1998 from Chicago, IL. back to St. Louis, MO. while working a regularly assigned ID Pool (RE-58 - St. Louis/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer J.S. Williams to his home terminal (St. Louis) immediately upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1137834 - Timekeeping Declination No. UI0618379 and UI0618380).

8. Claim of Engineer J. S. Williams (409-80-9516) for \$832.66 account required to perform Hours of Service Relief North of Villa Grove, IL. on train ZMXYC-07 on March 09, 1998 and required to work train ZYCLD-11 on March 11, 1998 from Chicago, IL. back to St. Louis, MO. while working a regularly assigned ID Pool (RE-58 - St. Louis/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer J.S. Williams to his home terminal (St. Louis) immediately upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1137833 - Timekeeping Declination No. UI0618377 and UI0618378).
9. Claim of Engineer V. A. Stoker (319-60-1618) for \$618.17 account required to perform Hours of Service Relief North of Villa Grove, IL. on train MNLPR-31 on June 01, 1998 and required to work train ZYCFW-02 on June 02, 1998 from Chicago, IL. back to Salem, IL while working a regularly assigned ID Pool (RE-50 - Salem/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer V.A. Stoker to his home terminal (Salem) immediately upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8.

(Carrier Labor Relations File No. 1138751 - Timekeeping Declination No. UI0618385 and UI0618386).

10. Claim of Engineer W. E. Smith (319-60-1618) for \$673.08 account required to perform Hours of Service Relief North of Villa Grove, IL. on train ZMQYC-17 on May 18, 1998 and required to work train ZYCHO-19 on May 19, 1998 from Chicago, IL. back to Salem, IL while working a regularly assigned ID Pool (RE-50 - Salem/Chicago ID Pool). Claim all earnings from this trip to be paid in addition to/not offset by any guaranteed earnings for the relevant pay period as required by Section 12, Question 9/Answer 9 of Arbitration Award No. 553. In addition, claim a basic day penalty account the Carrier did not deadhead Engineer W.E. Smith to his home terminal (Salem) immediately upon completion of this Hours of Service Relief as required by Section 9, Question 1/Answer 1 of Arbitration Award No. 553. Further, claim a basic day penalty account the Carrier used an ID crew to perform Hours of Service Relief North of Villa Grove, IL. with other sources rested and available in violation of Section 9, Question 1/Answer 1 and Section 12, Question 8/Answer 8. (Carrier Labor Relations File No. 1138752 - Timekeeping Declination No. UI0618140 and UI0618141)."

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.

This is another group of consolidated claims brought pursuant to the February 28, 1995 Award of Arbitration Board No. 553, establishing Interdivisional service between St. Louis, Missouri, and Chicago, Illinois, and Salem, Illinois. In each of these ten claims, the Organization contends that an engineer was called to perform Hours of Service relief off his regular Interdivisional Pool assignment. The Organization contends that earnings from these trips should have been paid without offsetting the guaranteed earnings for the relevant pay period. It is further claimed that basic day penalties are in order because the Carrier did not deadhead the engineers to their home terminals upon completion of the Hours of Service Relief assignment, and because the Carrier used these ID crews to perform Hours of Service Relief when other sources were rested and available to perform the work.

The Carrier objects at the outset to the combination of claims before the Board. The objection would have merit if there were material factual disputes which required individual examination, or if there were varying and disparate issues which the Organization was attempting to mesh together into a consolidated claim before the Board. However, the claims in this case present the same fact scenarios and the same issues. In the interest of economy and efficiency, we conclude that these consolidated claims are properly before the Board for determination.

We also reject the Carrier's contention that new arguments have been advanced by the Organization which are not properly before the Board. True, the parties are not permitted to raise de novo at this appellate level alleged matters of dispute not previously addressed. That principle is so well established it requires no citation. In this matter, however, the Organization has relied on the February 28, 1995 Award of Arbitration Board No. 553 throughout the handling of these claims. As such, we do not view the Organization's Submission arguments as materially different from the arguments presented during claims handling.

Apart from the foregoing procedural arguments, careful review of the record as a whole convinces the Board that this is not a matter of first impression. In First Division Awards 25175, 25176 and 25177, the Board persuasively and thoroughly addressed the same issues as in the instant case. In those interrelated decisions, the Carrier's defenses were rejected and the Organization's position was sustained. The Carrier's Submission in the instant case, with the exception of the matters addressed above, essentially repeats the same arguments and seeks the same

interpretation rejected by the Board in the prior cases, where the Agreement was found to have been violated.

Adherence to prior decisions, except when palpably erroneous, provides stability in contract interpretation. First Division Awards 24506; 24290; 23922. The Carrier has not demonstrated that the earlier awards on this issue are palpably erroneous and therefore we consider the prior decisions dispositive in rendering the following findings.

The Award of Arbitration Board No. 553 provides that earnings when used in other than ID Service will not be counted as an offset to the employee's guarantee payments. To the extent that Carrier has offset non-ID earnings against the Claimants' guarantees in the instant claims, the Agreement has been violated and the Carrier is directed to properly compensate the Claimants.

Further, Section 9 of Arbitration Board No. 553 provides that crews assigned in ID service will not be used for Hours of Service Relief until all other primary sources of employees available for this work have been exhausted. The record contains no showing that the other primary sources had been exhausted on the dates claimed. We find that the Carrier violated the terms of the Agreement, Section 9, when the Claimants, who were assigned to the ID pool, were used for Hours of Service Relief when employees from primary sources were available to perform this relief. A basic day penalty is assessed for this Agreement violation.

Finally, in accordance with the language of Section 9, Question and Answer No. 1, the Carrier was responsible to deadhead the Claimants to their home terminal upon completion of the service. The record indicates that the Claimants were not deadheaded to their home terminals upon completion of their Hours of Service Relief assignment. A basic day penalty is assessed for this Agreement violation.

These basic day penalty payments shall not be used in computing the Claimants' guarantees.

AWARD

Claim sustained in accordance with the Findings.

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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 20th day of August 2003.