

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25464

Docket No. 44943

03-1-00-1-U-2153

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 P. I. Blakeney (326-46-9250) for \$521.16, to be paid in addition to/not to be offset by any guaranteed earnings for the relevant pay period in accordance with Section 12, Question 9/Answer 9 of Arbitration Award No. 553 and Section 12, Question 8/Answer 8 of Arbitration Award No. 553 account called to perform Hours of Service Relief at Chicago (away from home terminal) on train CWFCM-24 on June 29, 1998 while regularly assigned to an Interdivisional Pool (RE-58 - St. Louis to Chicago ID Pool) with other sources being rested and available, plus a basic day penalty account required to perform Hours of Service Relief at Chicago (away from home terminal) while regularly assigned to an Interdivisional Pool with other rested and available sources for such service in violation of Section 9, Question 1/Answer 1 of Arbitration Award No. 553. (Carrier Labor Relations File Number 1145807 - Timekeeping Declination Number UI0717324 and UI0717325).
2. Claim of Engineer J. S. Williams (409-80-9516) for \$368.75, to be paid in addition to/not to be offset by any guaranteed earnings for the relevant pay period in accordance with Section 12, Question 9/Answer 9 of Arbitration Award No. 553 and Section 12, Question 8/Answer 8 of Arbitration Award No. 553 account called to perform Hours of Service Relief at Chicago (away from home terminal) on train CWFZ1-13 on June 14, 1998 while regularly assigned to an Interdivisional Pool (RE-58 - St. Louis to Chicago ID Pool) with other sources being rested and available, plus a

basic day penalty account required to perform Hours of Service Relief at Chicago (away from home terminal) while regularly assigned to an Interdivisional Pool with other rested and available sources for such service in violation of Section 9, Question 1/Answer 1 of Arbitration Award No. 553. (Carrier Labor Relations File Number 1137848 - Timekeeping Declination Number UI0704415 and UI0704416).

3. Claim of Engineer G. W. Pate (323-52-9077) for \$679.59, to be paid in addition to/not to be offset by any guaranteed earnings for the relevant pay period in accordance with Section 12, Question 9/Answer 9 of Arbitration Award No. 553 and Section 12, Question 8/Answer 8 of Arbitration Award No. 553 account called to perform Hours of Service Relief at Chicago (away from home terminal) on train ZHOYC-12 on March 13, 1998 while regularly assigned to an Interdivisional Pool (RE-58 - St. Louis to Chicago ID Pool) with other sources being rested and available, plus a basic day penalty account required to perform Hours of Service Relief at Chicago (away from home terminal) while regularly assigned to an Interdivisional Pool with other rested and available sources for such service in violation of Section 9, Question 1/Answer 1 of Arbitration Award No. 553. (Carrier Labor Relations File Number 11338770 - Timekeeping Declination Number UI0618776 and UI0618777)."

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.

These three claims arise 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, and Chicago, Illinois. The Organization contends that the Carrier violated the February 28, 1995 Award of Arbitration Board No. 553 when the Claimants, who were assigned to the ID pool, were called to perform Hours of Service Relief away from their home terminal with other rested and available sources for such service. It is the Organization's position that the Claimants were improperly used to perform this service, and, having been used, were not properly compensated because the Carrier incorrectly used the earnings from these trips as an offset to the guarantee for the relevant pay period. The Organization also argues that a basic day penalty is appropriate to remedy the Agreement violation.

The defenses raised by the Carrier have already been thoroughly addressed in First Division Awards 25175; 25176; 25177 and First Division Awards 25460, 25461 and 25462. The Board's findings in those cases are incorporated herein. Based on these earlier decisions, a sustaining Award shall issue, as follows.

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 the 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.

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

Form 1
Page 4

Award No. 25464
Docket No. 44943
03-1-00-1-U-2153

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 20th day of August 2003.