

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25465
Docket No. 44944
03-1-00-1-U-2156

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

| | | | | | |
|----------|---------|---------|---------|---------|---------|
| "1170409 | 1170410 | 1170411 | 1170412 | 1170413 | 1170414 |
| 1170415 | 1170416 | 1170417 | 1170418 | 1170419 | 1170420 |
| 1170421 | 1170422 | 1170423 | 1170424 | 1170425 | 1170426 |
| 1170427 | 1170428 | 1170429 | 1170430 | 1170431 | 1170432 |
| 1170433 | 1170466 | 1170467 | 1170468 | 1170469 | 1170470 |
| 1170471 | 1170472 | 1170473 | 1170474 | 1170475 | 1170476 |
| 1170477 | 1170478 | 1170479 | 1170480 | 1170481 | 1170483 |
| 1170482 | 1170484 | 1170485 | 1171414 | 1171417 | 1171418 |
| 1171419 | 1171547 | 1171548 | 1171549 | 1171550 | 1175551 |
| 1171575 | 1171576 | 1171577 | 1171578 | 1171746 | 1171762 |
| 1171763 | 1171764 | 1171765 | 1171766 | 1171767 | 1171768 |
| 1171769 | 1171770 | 1171771 | 1171772 | 1172286 | 1172287 |
| 1172288 | 1172289 | 1172290 | 1172291 | 1172292 | 1172293 |
| 1172294 | 1172295 | 1172296 | 1172297 | 1172298 | 1174876 |
| 1174877 | 1174878 | 1174879 | 1174880 | 1174881 | 1174882 |
| 1174883 | 1174884 | 1174885 | 1174886 | 1174887 | 1174888 |
| 1174889 | 1174890 | 1174891 | 1174985 | 1174907 | 1174908 |
| 1174909 | 1174910 | 1174921 | 1174922 | 1174923 | 1174924 |
| 1174876 | 1174877 | 1174878 | 1174879 | 1174880 | 1174881 |
| 1174882 | 1174883 | 1174884 | 1174885 | 1174886 | 1174887 |
| 1174888 | 1174889 | 1174890 | 1174891 | 1174895 | 1175070 |
| 1178282 | 1178283 | 1178284 | 1178285 | 1178286 | 1178287 |
| 1178288 | 1178289 | 1178290 | 1178291 | 1161863 | 1161864 |
| 1161866 | 1161867 | 1161868 | 1161869 | 1161870 | 1161871 |
| 1161872 | 1161873 | 1161874 | 1161875 | 1161876 | 1161877 |
| 1161878 | 1161879 | 1161880 | 1161881 | 1161882 | 1161883 |
| 1161884 | 1161885 | 1161886 | 1161887 | 1161888 | 1161889 |
| 1161890 | 1161891 | 1161892 | 1161893 | 1161894 | 1161492 |
| 1161858 | 1161859 | 1161860 | 1161861 | 1161862 | 1161895 |
| 1161896 | 1161897 | 1161898 | 1161899 | 1161900 | 1161901 |

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|---------|---------|---------|---------|---------|---------|
| 1161902 | 1161903 | 1161904 | 1161905 | 1161906 | 1161907 |
| 1161908 | 1161909 | 1161910 | 1161911 | 1161912 | 1161913 |
| 1161914 | 1161915 | 1161916 | 1161917 | 1161918 | 1161919 |
| 1161920 | 1161921 | 1161922 | 1161923 | 1161924 | 1161925 |
| 1161926 | 1161927 | 1161928 | 1161929 | 1161930 | 1161931 |
| 1161932 | 1161933 | 1161934 | 1161935 | 1161936 | 1161937 |
| 1161938 | 1161939 | 1161940 | 1161941 | 1161942 | 1161943 |
| 1161944 | 1161945 | 1161946 | 1161947 | 1161948 | 1161949 |
| 1161950 | 1161951 | 1161952 | 1161953 | 1161954 | 1161955 |
| 1161956 | 1161962 | 1161963 | 1161964 | 1161965 | 1161966 |
| 1161967 | 1161968 | 1161969 | 1161970 | 1161971 | 1161972 |
| 1161973 | 1161974 | 1161977 | 1161978 | 1161979 | 1161980 |
| 1161981 | 1161982 | 1161983 | 1161984 | 1163886 | 1163887 |
| 1163888 | 1163889 | 1163890 | 1163891 | 1163892 | 1163893 |
| 1163894 | 1163895 | 1163942 | 1163943 | 1163944 | 1163945 |
| 1163946 | 1163947 | 1163948 | 1163949 | 1163950 | 1163951 |
| 1163952 | 1163953 | 1163954 | 1163955 | 1163956 | 1163957 |
| 1163958 | 1163959 | 1163960 | 1163961 | 1163962 | 1163963 |
| 1163964 | 1163965 | 1163966 | 1163967 | 1163968 | 1163969 |
| 1163970 | 1163971 | 1163972 | 1163973 | 1163974 | 1163975 |
| 1163976 | 1163977 | 1163978 | 1163979 | 1163980 | 1163982 |
| 1163983 | 1163984 | 1163985 | 1163986 | 1163987 | 1163988 |
| 1163989 | 1163990 | 1163991 | 1163992 | 1163993 | 1163994 |
| 1163995 | 1163996 | 1163997 | 1163998 | 1164290 | 1164606 |
| 1164891 | 1168229 | 1168349 | 1168350 | 1168351 | 1168352 |
| 1168353 | 1168354 | 1168355 | 1168356 | 1168357 | 1168358 |
| 1168359 | 1168360 | 1169914 | 1169915 | 1170327 | 1170328 |
| 1170329 | 1170330 | 1170331 | 1170332 | 1170333 | 1170334 |
| 1170335 | 1170336 | 1170337 | 1170338 | 1170339 | 1170340 |
| 1170341 | 1170342 | 1170345 | 1170346 | 1170347 | 1170348 |
| 1170349 | 1170350 | 1170351 | 1170352 | 1170353 | 1170354 |
| 1170355 | 1170356 | 1170357 | 1170358 | 1170359 | 1170360 |
| 1170361 | 1170362 | 1170363 | 1170364 | 1170365 | 1170366 |
| 1170367 | 1170368 | 1170369 | 1170370 | 1170371 | 1170372 |
| 1170373 | 1170374 | 1170375 | 1170376 | 1170377 | 1170378 |
| 1170379 | 1170380 | 1170381 | 1170382 | 1170383 | 1170384 |
| 1170385 | 1170386 | 1170387 | 1170388 | 1170389 | 1170390 |
| 1170391 | 1170392 | 1170393 | 1170394 | 1170395 | 1170396 |
| 1170397 | 1170398 | 1170399 | 1170400 | 1170401 | 1170402 |
| 1170403 | 1170404 | 1170405 | 1170406 | 1170407 | 1170408 |

Claim of various engineers, various dates, for a basic day penalty, each date claimed by each engineer, account the Carrier failed to provide a copy of the MPUL Scheduled Agreement Book to each affected engineer in the St. Louis Hub, prior to the implementation of the St. Hub Merger Implementing Agreement (November 01, 1998), in violation of Article VI and Side Letters No. 3 and No. 9 of St. Louis Hub Merger Implementing Agreement of the Union Pacific/Southern Pacific Merger. All claims listed herein are valid as presented pursuant to Item No. 8 of System Agreement - Claims Handling Process dated March 21, 1996 account Carrier violation Item No. 6 of System Agreement - Claims Handling Process dated March 21, 1996. Any claim listed herein that has not been conferenced by the Carrier in accordance with the provisions of Item No. 5 of System Agreement - Claims Handling Process dated March 21, 1996, as set forth in the Agreed to Questions and Answers to the On-Property portion of the 1996 BLE National Agreement, are valid as presented pursuant to Item No. 8 of System Agreement - Claims Handling Process dated March 21, 1996. (Carrier Labor Relations File Numbers identified above)."

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 numerous claims listed in this case allege that the Claimants were not provided a copy of the Collective Bargaining Agreement by November 1, 1998, the implementation date of the St. Louis Hub, as agreed in Side Letter 3 of the St. Louis Hub Merger Agreement. The Organization seeks "various amounts of days pay and/or mileage" for the alleged violations.

The Carrier takes issue at the outset with the fact that the Organization has joined these individually handled claims before the Board without the Agreement of the Carrier. While we believe that the better course of action would be to have the parties address these multiple claims as a group on the property, rather than to have one party proceed

unilaterally to combine claims at this level, we nevertheless take cognizance of the fact that, with the exceptions discussed below, the claims present the same facts and issues. In the interest of economy and efficiency, we find that they are properly joined in this proceeding.

The Carrier has also argued, without refutation by the Organization, that the following claims were not conferenced and are therefore not properly before the Board:

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|---------|---------|---------|---------|
| 1174921 | 1174922 | 1174923 | 1174924 |
|---------|---------|---------|---------|

In addition, the following claims were listed twice:

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|---------|---------|---------|---------|
| 1174876 | 1174877 | 1174878 | 1174879 |
| 1174880 | 1174881 | 1174882 | 1174883 |
| 1174884 | 1174885 | 1174886 | 1174887 |
| 1174888 | 1174889 | 1174890 | 1174891 |

Moreover, the following claims were not filed by the Organization on the property:

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| 1175551 | 1174985 | 1164891 |
|---------|---------|---------|

And, case 1161951 has already been docketed to the First Division in Case 00-1-U-2142.

The Organization does not refute these procedural irregularities. We find, therefore, that the foregoing claims are not properly before the Board and, accordingly, they are dismissed.

We turn to the remaining claims. In First Division Award 25459, the Board had occasion to consider many of the issues now raised by the parties herein. In that case, the claimant was a local chairman whose time claim asserted that his rights under the contract had been violated when he did not receive a copy of the Collective Bargaining Agreement before November 1, 1998, the agreed upon date under Side Letter No. 3 of the St. Louis Hub Agreement. Concluding that there was a breach of the Agreement, the Board examined the relevant factors in determining the appropriateness of a penalty. The claim for four basic days was reduced on the basis that no intentional violation was proved. However, the claimant's status as a local chairman was determined to be a significant factor in awarding two basic days.

To the extent that the parties have raised some the same procedural issues in the instant matter as were fully considered by the Board in that award, our findings should be incorporated herein as if fully rewritten.

On the merits, we find that there is a somewhat different balance of factors which must be taken into account in determining whether to sustain the claims in this case. We remain unconvinced, based on the record in its entirety, that bad faith has been proven or that the Carrier intentionally denied the Claimants copies of the contract. Equally important in this decisional matrix, the Claimants have a more attenuated claim to a monetary remedy than a local chairman. There is no evidence that they suffered any injury or were prejudiced by not timely receiving a copy of the Agreement. Proof of calculable loss is nonexistent. To award damages under these circumstances would amount to a punitive remedy not provided for in the Agreement.

Under these circumstances, it is the Board's finding that the Agreement was violated but the requested remedy is denied.

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.