

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25922

Docket No. 44983

03-1-00-1-U-2180

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:

"Labor Relations File Nos.:

1187210	1188890	1188895	1188898
1188912	1183787	1191989	1191990
1191991			

Claim of various engineers, various dates, for 130 miles penalty, each date claimed, account required to perform duties not in connection with their own train when being required to perform various work events at the White Bluffs Coal Plant in violation of the North Little Rock/Pine Bluff Hub Merger Implementing Agreement, BLE Scheduled Rules and BLE National Agreements."

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.

At the outset, we note that three of the instant claims, Labor Relations Files 1191989, 1191990 and 1191991, have been withdrawn by the Organization without prejudice.

The remaining six claims deal with the Carrier's servicing and operation of the White Bluff power plant. The plant is located in the Zone 3 seniority district between the terminals of North Little Rock and Pine Bluff, Arkansas. The White Bluff industrial facility has no yard assignments and is served by road crews.

Loaded coal trains may come from Van Buren, crewed by Engineers in the Zone 2 seniority district of the North Little Rock/Pine Bluff Hub. Claims 1183787 and 1188890 deal with Zone 2 crews called at the home terminal of North Little Rock to operate an empty coal train to Van Buren. In both of these claims, the Claimants were required to spot remaining load cars for unloading prior to departing White Bluff with an empty train. In claim 1188890, the Claimant was also required to attempt to relink the head and rear Distributed Power Locomotive consist. As the rear DP was disabled, the Claimant added the unit to the lead locomotive consist.

Claims 1188912, 1188898, 1188895, and 1187210 deal with Zone 2 Engineers operating a loaded coal train from Van Buren to White Bluff. In each of these claims, the Claimants were required to make a cut between the lead locomotive consist and the head car because the train was not properly lined up for unloading. In claim 1188912, the Claimant was also required to unlink his head and rear DP locomotive consist and make a cut on the rear 25 cars, pulling them back from the unloading facility.

The Organization contends that the provisions of the North Little Rock/Pine Bluff Hub Agreement, Article I, Section B govern the outcome here. The pertinent provisions state:

- "5. Zone 2 pool freight engineers may not be used to handle their through freight trains either at the beginning or the end of their trip, from North Little Rock to Pine Bluff or vice versa.

Such trackage may only be used by such engineers under the 25-mile zone provisions described below.

- a. Pool freight engineers described above may receive their train up to twenty-five (25) miles on the fair [sic] side of the terminal or receive or deliver up to twenty-five (25) miles on the UP Monroe Subdivision between North Little Rock to Pine Bluff without claim or complaint from any other engineer.
 - b. For purposes of the application of this Agreement, the lines of demarcation shall be the terminal (switching) limits of North Little Rock to Pine Bluff Terminals prior to the implementation of this Agreement. For the territory between North Little Rock to Pine Bluff, the engineer must operate south of UP Monroe Subdivision Mile Post 315.7, vicinity of North Little Rock, or north of UP Monroe Subdivision Mile Post 346.0 vicinity of Pine Bluff.
 - c. When so used, the engineer shall be paid an additional one half (1/2) day at the basic pro rata through freight rate in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.
6. Engineers utilizing the provisions of 5, above to deliver and spot their loaded coal trains to White Bluff shall not thereafter be required to handle empty coal trains, cars or power from White Bluff back to North Little Rock prior to final tie-up."

The Organization asserts that the Carrier may not require Zone 2 Engineers to perform work at White Bluff beyond what has been narrowly set forth in paragraph 6, above. The Carrier argues the work performed by the Claimants was

contemplated under paragraph six and in any event should be deemed part of the Claimants' regular assignments.

In deciding a case presenting virtually identical claims, contract provisions, issues and arguments, the Board sustained the Organization's position in First Division Award 25457, holding in pertinent part:

"Zone 2 Engineers have only limited rights in Zone 3 territory. They may perform service within the specific limitations of the 25 mile zone and, as particularly set out in Paragraph 6, they may deliver and spot their loaded coal trains, or receive empty coal trains at White Bluff for westbound return service to Van Buren. Absent the 25 mile zone provision, Zone 2 Engineers would have no right to deliver, spot or receive coal trains, or do anything else, for that matter, at the White Buff power plant.

Carrier's position, if adopted, would broaden these very specific, limited rights to use Zone 2 Engineers in Zone 3 beyond what was expressly contemplated by the parties. No such finding is warranted. That the parties intended to narrowly apply the 25-miles zone provision is bolstered by Question and Answer No. 3 in connection with the Hub Agreement:

ARTICLE I - WORK AND ROAD POOL CONSOLIDATION

Q:3. Since the 25-mile zone provisions specify that engineers may be called to receive 'the train for which they were called', does this preclude their use under such 25-mile zone provision for any other train?

A:3. Yes, unless other pre-existing local agreements or practices permit otherwise.

There has been no showing on this record that applicable pre-existing local agreements or practices exist which would permit the use of Zone 2 Engineers under the circumstances at issue here. We must conclude, therefore, that the assignment of the Claimants . . . was not permitted under current Agreement language."

There appears to be no reason on the record presently before us to depart from the reasoning expressed above. The issue has been resolved in favor of the Organization. Under the doctrine of res judicata, First Division Award 25457 has fully and finally disposed of the dispute presented herein

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 29th day of October 2003.