

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25978
Docket No. 45932
04-1-02-1-G-1726

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Locomotive Engineers
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“Claim of Gateway Western Engineer W. L. Klasing for various amounts of additional earnings totaling \$482.16 on various dates in October 2001 while working the Slater Local - identified as Carrier File No. G0102-2839 (201-01523G).”

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 time of the incident that gave rise to this dispute (October 2001), Claimant W. L. Klasing was working as an Engineer on the Slater Local. The record reveals that on some occasions in October 2001, the Conductor on the job earned more money on a daily basis than did the Claimant. The Claimant, therefore, submitted time slips requesting that his total pay for the day be \$4.00

more than the total pay earned by the Conductor on the job. He based his claim on the BLE/KCS Agreement language quoted below:

"GATEWAY WESTERN RULE 57 - CERTIFICATION ALLOWANCE

Effective July 1, 1995 Engineers on Gateway Western Railway who possess FRA Certification will receive an allowance of \$4.00 per tour of duty worked. This certification allowance will provide the Engineer no less than \$4.00 in additional compensation per tour of duty than the compensation earned by any other train crew member."

The Carrier denied the claim on a number of grounds. Chief among them was the fact that the Conductors involved in the crew are no longer GWWR employees, but are now Kansas City Southern employees. They are paid on a different basis than they were when Rule 57 was agreed upon. The following two paragraphs are taken from the Carrier's Submission and clearly outline its position in this matter:

"It remains the Carrier's position that because the Conductors are no longer GWWR employees that Rule 57 is essentially moot. When the rule was written, engineers and conductors were paid the same daily rate for the entire trip. The BLE negotiated an agreement for payment of \$4.00 as a certification allowance, which became the basis for the provision that states the engineer will earn \$4.00 more than any other member of the train crew.

As you will recall, on October 1, 2001, Carrier implemented a merger agreement. As a result of these agreements, all former Gateway train service employees became Kansas City Southern employees. They were no longer paid a daily trip rate as they had been on the GWWR, but were now paid under National mileage rates. The BLE was afforded the same opportunity to adopt the KCS agreement and pay rules; however, elected not to do so at that time. It is the Carrier's position that in order for Rule 57 to have meaning, you have to compare apples to apples. Comparing an

engineer's salary who is paid on a daily trip basis with a conductor's who is paid on a mileage basis, is like comparing apples to oranges.”

The Board reviewed the record and has considered in detail the parties' respective positions. As a result of that review, the Board is compelled to conclude that Rule 57 quoted above clearly states that an Engineer will be paid \$4.00 more per tour of duty than the Conductor on the crew. The Carrier's argument to the contrary is not persuasive. Rule 57, a Rule in the BLE Schedule Agreement, cannot be nullified because the Conductors negotiated changes in their Agreement with the Carrier. If a Conductor, regardless of what pay Agreement he or she works under, is a part of a crew in which a Gateway Engineer is in charge, Rule 57 states that the Engineer shall earn \$4.00 per tour more than the Conductor. The parties are obligated to figure out how to calculate the proper pay.

The Board recently decided a case involving a Rule 57 violation on another Kansas City Southern property (MidSouth Rail Corporation, First Division Award 25449, August 20, 2003). The Board sustained that case. Based on the record before the Board in the instant case and the Board's recent sustaining Award in a similar case, it will sustain the claim in this instance.

AWARD

Claim sustained.

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 10th day of March 2004.