

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 26020  
Docket No. 45010  
04-1-00-1-U-2210

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

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

**STATEMENT OF CLAIM:**

“Claim of Engineer W. P. Griffin, Union Pacific (Midwest District) former Chicago and Northwestern Railroad, for 130 basic cay miles while assigned to UPRR Train ZSCCS on March 4, 2000. The claim resulted when claimant’s time expired under the Federal Hours of Service Law and claimant was not notified to combine his service trip with the deadhead trip into the final terminal.

The claim is supported by Article VI of the 1986 Arbitration Award No. 458, Side Letter 4, Example 11 and Q&A #3, attached as Employee’s Exhibit A.”

**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.

On March 4, 2000, the Claimant was in pool service and working as Engineer on Train ZSCCS operating between Missouri Valley, Iowa and Clinton, Iowa. He reported for duty at 4:45 A.M. and departed at 4:55 A.M. Because the Hours of Service Law permitted the Claimant to work only until 4:45 P.M., the Train Dispatcher directed him to secure his train upon his arrival at Grand Mound, Iowa. The Claimant reached Grand Mound at 4:15 P.M., and the relief crew arrived at 4:45 P.M. The Claimant was then deadheaded to Clinton, arriving at 5:15 P.M. The Organization asserts the Claimant was never informed that he was to combine his deadhead with his service trip. Accordingly, it now claims he is entitled to a separate basic day for the deadhead from Grand Mound to Clinton.

The parties agree that the Carrier may require an employee to combine his deadhead and service trips and be paid actual miles or hours on a continuous time basis in accordance with Arbitration Award 458. They also agree that the Carrier has an obligation, under Side Letter No. 4, to notify the Engineer before being relieved from service, if it wishes to avail itself of this right. If the Engineer is not notified, the deadhead and service cannot be combined.

The Carrier insists the Claimant received proper notification when he was given Message No. 257 upon reporting for duty. Message No. 257, which is a standard form, reads as follows:

"This will serve as your notice that should the hours of service overtake you prior to the completion of trip, you are instructed to combine your service and deadhead unless otherwise instructed by the Train Dispatcher."

The Organization does not dispute the Carrier's position that Message No. 257 constitutes proper notification that deadhead and service will be combined. Instead, it only argues the Claimant did not receive Message No. 257. According to the Carrier, this message is generated by the same system that provides all of the other documents the Claimant must have in order to begin his road trip.

The Carrier argues the claim must fail because the Organization bears the burden of proof. Thus, says the Carrier, the Organization must establish the fact that the Claimant did not receive the message. The Organization, on the other hand, contends the Carrier, as the keeper of such records, has the burden of proving the Claimant did receive the message. We agree with the Organization. By the

Carrier's reasoning, the Organization would be required to prove that something did not happen, i.e., prove a negative. The Carrier has the means to ensure that employees receive the message before departing. It has provided no documentation at all that would show this particular Engineer received the message on this particular day. By not establishing that the Claimant was notified to combine the deadhead and service in advance, and then refusing to pay the Claimant a separate deadhead payment, the Carrier has failed to comply with the Agreement. The claim must be sustained.

**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 15th day of June 2004.