

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 26022
Docket No. 45317
04-1-01-1-U-2615

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 in behalf Engineer J. W. Hunt, Union Pacific Railroad (former CNW) for 8 hours in addition to all other earnings on January 30, 2001 when required to operate in unassigned Helper Service while assigned to the Bill, Wyoming Freight Pool.

Claim premised upon South Morrill - Bill ID Service Award, Article I, Section 7 (c) and BLE - UPRR Guaranteed Extra Board Agreement, Paragraph 10, June 1996 Agreement.”

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 facts in this case are not in dispute. On January 30, 2001, the Claimant was assigned to the Bill, Wyoming Freight Pool. Because the extra board at Bill was depleted, the Claimant was called to work in unassigned helper service. This is work that the Carrier agrees accrues to the Extra Board. Article I, Section 7 (c) of the Coal

Line Interdivisional Agreement provides that "extra unassigned helper service to be performed by Carrier north and south of Bill will be protected by the Bill Extra Board." The Carrier argues it was privileged to use Claimant for this service because there is no provision in the Extra Board Agreement for calling employees when the board is exhausted, and contends the ID Agreement does not restrict Pool Engineers from performing unassigned extra service. The Carrier has also asserted that the Claimant was an improper Claimant and that only an Extra Board employee could stand as a proper Claimant.

First, we reject the Carrier's argument concerning the Claimant's standing. This is not a claim for Extra Board work, but, rather, a claim that the Claimant was improperly handled and used on work that he should not have been required to perform. In this regard, he is the proper person to make this claim.

Although the Extra Board Agreement may not provide for calling employees when the board is exhausted, this does not give the Carrier the right to call whomever it chooses. While the Carrier need not suspend its operation until the proper employees are available, it must pay the price when it elects to use the improper employee. In this case, Article I, Section 7 (c) effectively assures pool service employees that they will not be used for extra unassigned helper service by requiring that this service be protected by the Bill Extra Board. The Claimant, therefore, was used outside the parameters of his pool assignment, in violation of the Agreement, and is entitled to the additional compensation claimed.

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.