

PUBLIC LAW BOARD NO. 4450

AWARD NO. 17
NMB CASE NO. 17
UNION CASE NO. C - 660 - 802
COMPANY CASE NO. 9103172

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
Western Region
for the territory
Los Angeles - Salt Lake City

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Claim of Engineer K. J. Mikkelsen for 108 miles for second trip out of terminal on timeslip number 18 dated February 3, 1991.

OPINION OF BOARD:

Engineer K. J. Mikkelsen (Claimant) was working on the RE58 Engineer's Pool on February 3, 1991. The Claimant's home terminal is Los Angeles, California, and the away-from-home terminal is Yermo, California.

On the claim date Engineer Mikkelsen was called in unassigned service to perform Dog Catch or Fly Catch duties. He went on duty at Yermo at 9:00 p.m., operating approximately 45 miles to Victorville to pick up a train which had stopped at that location due to the Hours of Service Law. The Claimant returned with that train to Yermo, arriving at 1:50 a.m. after 4 hours 50 minutes on duty. The Claimant parked the train at Yermo and went to eat. At 5:05 a.m., after 8 hours 5 minutes on duty, he went back to work,

departing Yermo at 5:10 a.m. to make another Hours of Service Law pick up at Daggett, a distance of approximately two miles. He returned at 7:00 a.m. and went off duty at Yermo at 7:30 a.m., after a total of 10 hours and 30 minutes on duty and after having run a total of approximately 94 miles.

Payment of a new day for the second trip out of Yermo was claimed on the basis of Rule 82. That rule reads as follows:

RULE 82. RELEASE AT TERMINALS. When engineers reach a division terminal, completing a run for which they have been called, it is understood their time closes for that trip, and that, in case they are again called for immediate service beyond such terminal, a new trip is begun. This is not intended to change practice of paying for doubles, and is subject to Rules 13, 26 and work train and helper service rules.

Time keeping declined Claimant's Claim on Rejection Notice No. AI0203011, which reads as follows: "108 Miles (DogCatch/Fly Crew) Dogcatching is not subject to payment under the Short Turnaround Service Rule." The Short Turn around Rule, time keeping is referring to is, Rule 26 of the Agreement between the Union Pacific Railroad Company for the territory Los Angeles-Salt Lake, and the Brotherhood of Locomotive Engineers. Rule 26 reads as follows:

RULE 26 ZONE RULE. Engineers is pool or irregular freight service may be called to make short trips and turnarounds with the understanding that one or more turnaround trips may be started out of the same terminal, and paid actual miles with a minimum of 100 miles for day, provided that (1) the mileage of all trips does not exceed 100 miles (2) the distance run from the terminal to the turning point does not exceed 25 miles, and (3) engineers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours excepting as a new day, subject to the first-in first-out rule or practice.

Calls for engineers under this rule shall specify short turnaround service.

. . .

The Claim that Carrier violated Rule 82 in the above-described circumstances must be denied because it lacks factual support in the record. Rule 82 is not an "automatic" terminal release rule because the engineers' entitlement to release thereunder is predicated not only upon arrival at a division terminal. In addition, a Rule 82 terminal release also requires the occurrence of two (2) conditions upon arrival at a division terminal: 1) completion of the assignment (a "run" or "that trip") for which the Engineer was called and 2) another call for immediate service beyond such terminal. So far as this record shows, neither of those two conditions was fulfilled in the factual scenario giving rise to the present claim.

From every indication we have, Claimant was not called for any particular trip or run but rather was called at the outset for fly catch/dog catch service, i.e., to provide relief for a crew or crews outlawed under the Hours of Service Law. Significantly, the claim also makes no reference to any call for "immediate service" subsequent to arrival at Yermo with the first outlawed train. We must conclude that the conditions for properly invoking Rule 82 were not met in this case.

It has been authoritatively determined on this property that, in the absence of contractual support under a terminal release rule, multiple dog catching trips during a single tour of duty are payable on the basis of the greater of continuous time, actual mileage or a basic minimum day. In that connection, Carrier was

within its rights to rely upon the holdings in PLB No. 5028-3 (Van Wart, 1993):

The Claimant was properly paid. There was no automatic release rule shown. Hence, the series of three trips to relieve crews who had outlived under the Hours of Service Law at various times at different locations, was properly encompassed within single his tour of duty.

The facts herein are identical in principle to those found in property Award No 10 of PL 2703 (Ables) which involved a Conductor and a similar claim and identical rules as her involved. There the Claimant Conductor deadheaded to a point 42.1 miles from Nampa and returned in relief service to Nampa. Thereafter the Conductor was deadheaded to another point 23.6 miles from Nampa and returned therefrom in relief service. The Conductor Claimant sought to be paid for two separate distinct trips in relief service in lieu of the 131 miles in continuous service that he was allowed. PLB No 2703 denied such claim. The Award spelled out the rules here involved and offered in support. PLB No. 2703 denied the claim on the basis that Rule 42 - Short Turn Around Freight Service was not a pay rule but was a call rule. The Conductor was obviously not called under Rule 42.

Finally, although this particular claim was premised primarily upon Rule 82, both Parties also have invoked Rule 26, the so-called "Short Turnaround Service Rule." In that connection, BLE implicitly invoked Rule 26 by complaining that Claimant was required to make the second dog catch of his tour after being on duty more than eight (8) hours. For its part, Carrier expressly cited Rule 26 as an additional "make weight" argument for the Director of Labor Relations' denial of the claim. A review of precedent on the property suggests that both Parties are off base in relying on Rule 26 in this case. It has been held in PLB 2703-10 (R. Able), under contract language and facts virtually identical to the present case, that the Short Turnaround Service Rule is a call rule not a pay rule. If Claimant had been involved in such service, the fact that he was required to make the second dog catch after eight (8) hours on duty would be significant. However, he

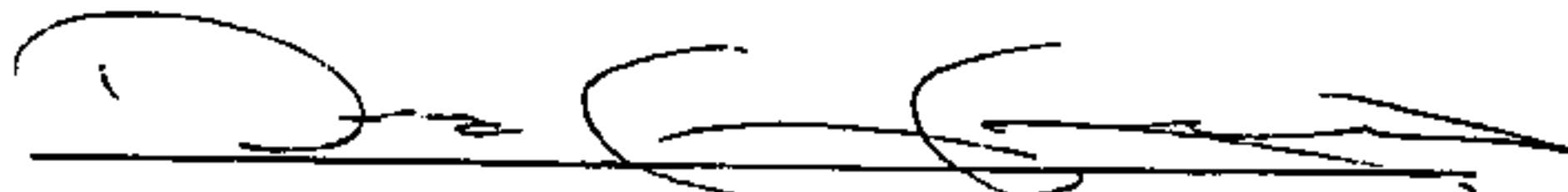
AWARD NO. 17
NMB CASE NO. 17
UNION CASE NO. c - 660 - 802
COMPANY CASE NO. 9103172

5

was not called under Rule 26 and nothing in this record supports the Organization's argument that Carrier was obligated to call him under Rule 26 or to pay for a second trip under Rule 82. Accordingly, in the absence of contractual support for this claim under either Rules 26 or 82, the claim must be denied.

AWARD

Claim denied.



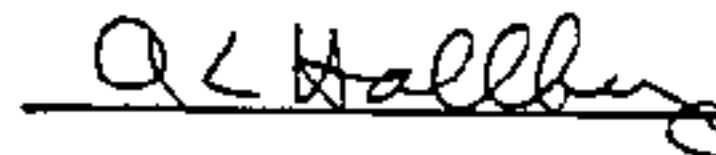
Dana Edward Eischen, Chairman

Dated at Ithaca, New York on December 2, 1994



Union Member

Dated at 12/14/94
on _____



Company Member

Dated at Springfield
on 12/14/94