

PUBLIC LAW BOARD NO. 5220

In the Matter of the)	National Mediation Board
Arbitration Between:)	Administrator
)	
BROTHERHOOD OF LOCOMOTIVE)	
ENGINEERS,)	
)	
Organization,)	
and)	
)	
BURLINGTON NORTHERN RAILROAD)	Case No. 2
COMPANY,)	Award No. 2
)	
Carrier.)	
)	

MEMBERS OF THE BOARD

Employees' Member: Ron Dean
Carrier Member: Jerry N. Locklin
Neutral Member: John B. LaRocco

STATEMENT OF THE CLAIM

Claims in favor of Engineer B. Williams, Irving, Texas for one hour's pay each date (December 13, 14, 15, 1986; January 2, 3, 4, 5, 1987) for performing abnormal duties (cleaning oily and greasy operating cab windows) at Irving, Texas account deleted from working timeslips.

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated August 8, 1991; and that all parties were given due notice of the hearing held on this matter.

I. BACKGROUND AND SUMMARY OF THE FACTS

Claimant is the regularly assigned Engineer on Road Switcher 93457 working out of Irving, Texas, an outlying point on Claimant's seniority district. The Carrier does not employ any mechanical department personnel at Irving.

On the claim dates, the Carrier instructed Claimant to clean grease and oil off the cab windows of his locomotive before operating the unit. Claimant complied with the Carrier's instructions. He sought a one hour arbitrary payment pursuant to Article 17(A)(2)(d) of the Schedule Agreement. The Carrier denied the claim raising Article VIII, Section 3 of the 1986 Arbitrated National Agreement as a defense.

The introductory paragraph of Article VIII, Section 3 provides that road engineers may perform certain enumerated items of work in connection with their assignment without additional compensation. Among the items enumerated in Section 3 are ". . . any duties formerly performed by firemen." [See Subsection (i) of Article VIII, Section 3.]

II THE POSITIONS OF THE PARTIES

A. The Organization's Position

The Organization contends that Claimant herein was entitled to an arbitrary payment under Article 17 because this particular abnormal duty, the cleaning of oily and greasy cab windows, is not a duty encompassed within the incidental tasks listed in Article VIII, Section

3. Thus, the task remains an abnormal duty untouched by Article VIII, Section 3 and so, Claimant was entitled to the payment specified in Article 17.

Contrary to the Carrier's contention, cleaning cab windows was not a normal or traditional duty of a fireman. Firemen did not service or supply locomotives. Indeed, the task is not even categorized as an abnormal duty in the Firemen's Schedule Agreement.

Because Irving is an outlying point having no mechanics, the Organization acknowledges that the Carrier can require an engineer to perform the disputed work but Article 17 imposes an obligation on the Carrier to provide an engineer with a one hour arbitrary payment when the work is performed.

B. The Carrier's Position

The Organization wants to escape from what it believes are the onerous provisions of Article VIII, Section 3 of the 1986 Arbitrated National Agreement. Article VIII, Section 3 and Side Letter No. 7 provide that the engineers must perform work incidental to their assignments without any added compensation. Article VIII, Section 3 eliminated the added compensation provided by Article 17 of the Schedule Agreement.

The Carrier could (but did not) have engineers clean cab windows at outlying points before the effective date of the 1986 Arbitrated National Agreement. It refrained from doing so to avoid paying the one hour arbitrary. The advent of Article VIII, Section 3 abolished the arbitrary. The Carrier utilized an engineer, like Claimant, who is properly compensated on a continuous time basis.

The work of cleaning cab windows is part of the engine service preparatory duties. A fireman formerly performed many tasks to make a locomotive ready for operation. Article 17,

Section A(2) of the Firemen's Schedule Agreement allowed the Carrier to assign preparatory work to a fireman, albeit, the fireman was allowed forty-five minutes of pay. Whether the cab cleaning window work was normal or abnormal is not germane. What is relevant is that the Carrier could instruct a fireman to perform the work and per Article VIII, Section 3, the Carrier may now assign any duty of a fireman to an engineer without paying added compensation.

The overriding intent of Article VIII, Section 3 was to give the Carrier greater flexibility in assigning work and to reduce cost prohibitive penalty payments. The Board should carry out the parties' intent by finding that the work was incidental to Claimant's assignment within the meaning of Article VIII, Section 3.

III. DISCUSSION

Unlike most of the nine items enumerated under Article VIII, Section 3, the ninth description of incidental work, that is, ". . . any duty formerly performed by firemen," was not written in specific terms. The other listed items constitute discrete tasks while Part (i) of Section 3 broadly refers to firemen's duties which lumps together a myriad of different work. The primary factual dispute in this case is whether or not cleaning oily and greasy cab windows can properly be characterized as a duty of a fireman.¹

The Carrier relies on the Firemen's Schedule Agreement which stated that a fireman could be required to perform any preparatory and hostling work before embarking on a trip. It is true that the Carrier may assign any tasks related to preparing the locomotives for departure

¹ The Board notes that Carrier asserted in the record that it did not assign engineers to clean oily and greasy cab windows until after the effective date of the 1986 Arbitrated National Agreement. The Carrier explained that, before 1986, it did not want to pay an engineer the added compensation mandated by Article 17. The record does not reflect who or which craft performed this work before 1986 at Irving. Presumably, laborers did not perform the work since no mechanical department personnel are employed at Irving. This gap in the record is unimportant except that there is not any evidence that firemen regularly cleaned oil and grease from locomotive cab windows before the effective date of the 1986 Arbitrated National Agreement.

to a fireman. However, Article 17(a) of the Firemen's Schedule Agreement clearly classified such preparatory work as beyond a fireman's normal assignment. Indeed, a fireman was entitled to an extra forty-five minutes of pay whenever the Carrier required a fireman, for example, to clean cab windows.

The Carrier is now trying to bootstrap Article VIII, Section 3(i) by stating that an item of work which it could assign to a fireman only if the Carrier also paid the fireman an arbitrary payment now permits the Carrier to assign the same task to an engineer without any additional compensation. The Carrier's interpretation would mean that if a fireman performs the duty, the Carrier must pay an arbitrary but if an engineer performs the task, the Carrier would not incur any additional liability. The term "any duty" in Article VIII, Section 3(i) can only reasonably and plausibly refer to a task regularly performed by a fireman within the ambit of a fireman's normal assignment. Duties outside the fireman's assignment for which the Carrier must pay an arbitrary can hardly be transformed into tasks incidental to an engineer's assignment. Only those duties normally performed by a fireman can reasonably be considered incidental to an engineer's assignment.

Article VIII, Section 3 is not coextensive with Article 17 of the Engineers' Schedule Agreement. The Article VIII, Section 3 supersedes Article 17 only to the extent that the former directly conflicts with the latter. Thus, items of work not enumerated in Article VIII, Section 3 but which are described as abnormal duties in Article 17, are still subject to the additional pay provisions of Article 17. Put differently, Article 17 survives when it addresses items of work not found in Article VIII, Section 3. Since we hold that the disputed task herein is not within the group of duties covered by Article VIII, Section 3(i), the Board must fall back on Article

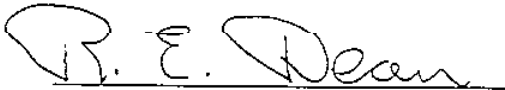
17 which continues to treat the cleaning of oil and grease from cab windows as an abnormal duty. When the Carrier requires an Engineer to perform this work it is obligated to pay the engineer one hour of additional compensation.

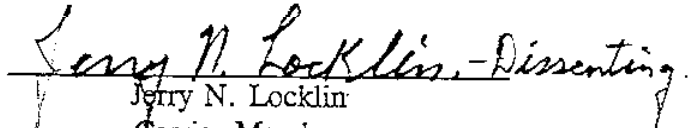
AWARD AND ORDER

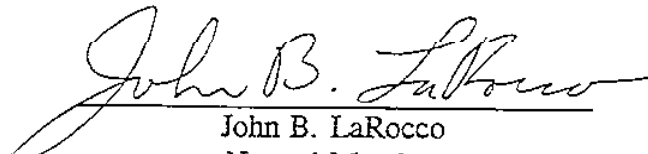
Claim sustained.

The Carrier shall pay Claimant one hour of pay for each claim date. The Carrier shall comply with this Award within thirty days of the date stated below.

Dated: December 23, 1993


Ron Dean
Employees' Member

 - Dissenting.
Jerry N. Locklin
Carrier Member
WRITTEN DISSENT ATTACHED.



John B. LaRocco
Neutral Member

CARRIER'S DISSENT TO AWARD NO. 2 OF PLB 5220

This Award engrafts upon Article VIII, Section 3(i), a provision for payment of "additional compensation" that is not found in the agreement. The language of the agreement permits engineers to perform "any duty" formerly performed by a fireman, and it does not make a distinction as to whether or not that duty had been paid for under the firemen's agreement, even as an abnormal duty.

If the parties had intended to waive payment only for those duties that a fireman performed without additional compensation, the agreement should have said so and not used the all-inclusive term "any" duties. Any such compensation was bargained away by the engineers when they agreed to perform any duties, without additional compensation, that were formerly performed by firemen. We simply do not believe that Windex (or Glass Plus) and the use thereof is beyond the technological capabilities and experience of locomotive engineers.

The Carrier considers the Award to be erroneous, and we must respectfully dissent.



Jerry N. Locklin
Carrier Member
Public Law Board No. 5220