

BEFORE  
PUBLIC LAW BOARD NO. 5263

IN THE MATTER OF THE ARBITRATION BETWEEN: UTU CASE NO. Y1000-597M-56-1  
C&NW FILE NO. 02-92-1000

THE CHICAGO and NORTH WESTERN )	AWARD NO. 40
TRANSPORTATION COMPANY )	CASE NO. 45
AND )	
THE UNITED TRANSPORTATION )	Claim of Engineer K. W. Freer
UNION )	for being called before his rest
	expired.

CLAIM:

Claim of Engineer K. W. Freer, Northeastern Seniority  
District (Proviso, Illinois) for an additional 8.0 hours  
on June 27, 1992, account called before his requested  
rest had expired.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated May 20, 1992, and has jurisdiction over the parties and the subject matter.

On June 27, 1992, Grievant worked from Proviso, Illinois to Butler, Wisconsin, and tied up at 1:20 p.m., with a total time on duty of seven hours and fifty minutes. Claimant entered his tie-up time into the computer terminal at Butler Yard, and indicated on the screen that he elected 10 hours of undisturbed rest [one of four choices presented on the screen: 8 hours, 8 hours, undisturbed, 10 hours, and 10 hours undisturbed]. Notwithstanding this election, he was called 6 hours and forty minutes later, at 8:00 p.m., to report for assignment at 9:30 p.m. He complied with the instruction and filed this grievance for an additional 8 hours pay.

The Union contends that Rule 56 of the BLE Agreement supports this claim. Rule 56 provides:

No fault will be found with an engineer who refuses to go out on account of needed rest. Ten hours being considered sufficient rest under ordinary circumstances, time to be figured from the time he registers on the duty register until time called.

Note: It will be understood that if an engineer asks for rest under the provisions of this rule, he must so indicate in the 'remarks' column of the rest register at points where such register is maintained. At points where no rest register is maintained, he shall indicate his desire on enginehouse or other register.

The Union contends that the Grievant fully complied with the requirements of the foregoing rule, and, thus, was entitled to the ten hours undisturbed rest he requested. Therefore, it argues that the claim should be paid.

The Carrier argues that the Grievant had sufficient rest under the Hours of Service Act, and had not complied with Special Order No. 1, dated April 5, 1992, which provides as follows:

#### BOOKING REST

Employees desiring to 'book rest' in excess of the time required by the Hours of Service Law, must personally contact the appropriate crew dispatcher in the CMC for permission. Requests for additional rest placed in the recorded 'mail box' will not be accepted.

The Carrier argues that the Grievant did not comply with the foregoing "Special Order" by calling the crew dispatcher and, therefore, the additional rest was not required or approved.


The Carrier must comply with the Hours of Service Act, and it has the right to promulgate reasonable rules for the operation of its railroad. However, it does not have the right to promulgate rules which violate the clear terms of its labor agreements. Rule 56 clearly provides that ten hours are considered sufficient rest under ordinary circumstances. Special Order No. 1 clearly attempts to

supplant the ten hours in the Rule with the minimum required under the Hours of Service Act, and requiring express permission for any greater amount of time. If the Carrier wishes to change the "ordinary" amount of rest provided for in Rule 56, it must do so through negotiation - not promulgation.

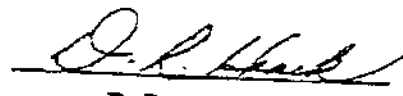
Based upon the factual situation in this record, we will award the Grievant 4 hours pay.

AWARD:

Claim sustained to the extent described in the findings.

  
James R. Johnson  
Neutral Member

  
C. R. Wise  
Carrier Member

  
D. R. Haack  
Employee Member

Dated: 5/21/96