CARRIER FILE: 55-99-0279
UTU FILE: C - 3908
NMB SUBJECT CODE: 63

BEFORE

PUBLIC LAW BOARD 5410

CASE NO. 74

DR. DAVID TWOMEY
CHAIRMAN AND NEUTRAL MEMBER

UNITED TRANSPORTATION UNION

V.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

CARRIER'S DISSENT

STATEMENT OF CLAIM:

Claims of Conductor G.F. Watkins, Kansas City, Missouri, claiming one day at freight rate of pay, April 9 [sic] and 19, 1999, "account required to begin a new day."

It rarely serves any useful purpose to dissent to an Award. Oftentimes, a dissent is simply a restatement of arguments considered by the Board and an attempt on the part of the "losing" party to reargue the case. BNSF's intent here is not to reargue the case; rather, we wish to point out that the decision reached by the Board in this case places BNSF in the position of being unable to provide hours of service relief to trains in excess of 25-miles from the destination terminal without incurring an arguably valid basic day penalty. In other words, accepting the logic and findings of this Board leads to the undesirable result of violating the contract no matter how the crew is called. Based upon the obvious "Catch-22" that this decision creates, Award No. 74 of this Board cannot be considered to set precedent and must be narrowly applied to only those cases specifically riding on the decision.

The Board rejected the previous arbitration addressing the issue. Moreover, the Board rejected the permissive nature of the "short turnaround rule," the rule upon which UTU relied. In any arbitration proceeding this can happen, and anyone who has been in this business any appreciable amount of time recognizes that arbitration, by its very nature and structure, may yield unanticipated and sometimes mutually unacceptable results. In this case, however, compliance with the reasoning and logic of the Board places BNSF in a position where any hours of service relief performed in excess of 25 miles from the destination terminal will generate a basic day penalty claim.

Furthermore, the Board completely overlooked the fact that hours of service relief was specifically and unambiguously addressed by the interdivisional service agreement. This interdivisional service agreement provides, in part, that relief crews (clearly understood to be hours of service relief crews) would protect such service between Springfield and Fort Scott, as well as between Kansas City and Fort Scott. Hours of service relief crews are to be either "short pool" or "extra board" crews. It is critical to note, as the Board apparently failed to do, that the distance between Kansas City and Fort Scott is over 100 miles, as is the distance between Springfield and Fort Scott. By its literal terms, the ID agreement assigns hours of service relief to pool and extra board crews where the one-way distance is oftentimes well beyond the 25-mile limitation.

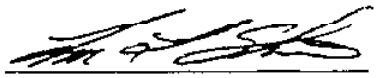
This Board decided that the "short turnaround rule" universally applies to hours of service relief under this collective bargaining agreement. The problem with the decision is that, on this property, the "short turnaround rule" can only apply to locations within 25 miles of the terminal, otherwise this rule has no application. In other words, if hours of service relief work is to be performed under the "short turnaround rule," it must be done within 25 miles or this rule is violated, presumably generating a basic day penalty. Application of the "short turnaround rule" in this case is clearly irreconcilable with the fact the ID agreement contemplates hours of service relief being performed by pool and extra crews within a territory exceeding 100 miles – one-way.

A rational application of the short turnaround rule would suggest that the 25-mile restriction simply precluded the Carrier from sending a crew out of the terminal a second time where the 25-mile restriction was exceeded on the first trip. But there is an arbitration decision on BNSF that finds the short turnaround rule is violated at the time any imposed threshold is exceeded. This prior Award decided a case where a crew, operating pursuant to agreement language identical to the instant case, performed two short turnaround trips. While returning with a train during the second trip, the crew exceeded 100 miles actually run. BNSF's position was that, under the "short turnaround rule", the only restriction is that the crew could not be required to depart the terminal on a third trip, except on the basis of a new day. The Board found otherwise. According to this previous Award, the "short turnaround rule" was violated at the time the crew exceeded 100 actual miles run, while performing the inbound leg of the second service trip. While BNSF continues to disagree, that was the Board's decision and interpretation of the short turnaround rule." Therefore, it only stands to reason that this rule would likewise be violated if there were a 25-mile to turning point restriction and the crew went 100 miles before turning. It is for this reason that (1) the parties specifically addressed relief service in the ID Agreement and (2) the majority of arbitration panels deciding this issue recognize that hours of service relief is, indeed, a type of service unto itself. The findings in Award 74 of Public Law Board 5410 are clearly irreconcilable with the ID agreement providing for pool and extra crews to perform hours of service relief where the

turning point is contractually fixed at a location over 100 miles away. Based upon the application of this Award and other relevant agreement provisions, the crews are entitled to a penalty day payment no matter how they are called.

The Award is completely erroneous. It places DNSF in a position where hours of service relief to trains more than 25 miles from the terminal will generate a penalty basic day claim. This Catch-22 is due to the Board attempting to pound a square peg into a round hole by forcing the "short turnaround rule" onto a completely separate class of service. For all of these reasons as well as others presented during the handling of this case on the property, the Carrier respectfully dissents to the decision reached in Award 74 of Public Law Board 5410.

Respectfully submitted,



Gene L. Shire
General Director Labor Relations
The Burlington Northern and Santa Fe Railway Company