

DISPUTE: Burlington Northern Railroad Company

"Article IX of the ID Agreement 6-2-72 states in whole, 'Engineers who are required to deadhead over the expanded districts provided in this agreement will be provided with reasonable comfort while so deadheading and will use Amtrak passenger trains when reasonably available (emphasis ours). Whenever an engineer is required to deadhead on a freight train, a caboose that has comfortable seating for both the working crew of the train and the employees being deadheaded will be

FINDINGS: This Board, upon the whole record and all of the evidence, finds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

DECISION: The claim was filed on the basis of the following rules:

"41(c) Deadhead on Freight Trains - Engineers will not be deadheaded on freight trains from one terminal to another when it can be avoided.

"Article IX - Engineers who are required to deadhead over the expanded districts provided in this agreement will be provided with reasonable comfort while so deadheading and will use Amtrak passenger trains when reasonably available. Whenever an engineer is required to deadhead on a freight train, a caboose that has comfortable seating will be provided. No more than one crew will be deadheaded on the working caboose of the train."

After reviewing the arguments of the Parties, the Board believes that the critical question here is "at what point in time did the Carrier decide to deadhead the claimant?" The claim asserts the decision was made by 8:20 a.m. to deadhead the Claimant on Freight Train No. 3 at approximately 11:30 a.m. Given this fact, the Union contends that Amtrak was reasonably available since its departure was at 9:45 a.m. They note three other crews were deadheaded on Amtrak. The Carrier on-the-property indicated that Amtrak wasn't available because he was called to deadhead at 12:25 p.m.

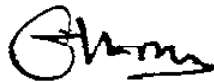
Significantly, the Carrier on the property never specifically responded to the Claimant's factual assertion that he was informed of the decision to deadhead via freight train at a time that Amtrak was still available. The Carrier, prior to appeal to the board, merely stated that the Claimant was called to deadhead at 12:25 p.m. Of course, this doesn't necessarily speak to the issue of what time the decision was made and thus doesn't refute the Claimant's statement Amtrak was available when he was called. Before the Board the Carrier went into an elaborate factual explanation that the Claimant was actually called to operate a grain train at the time Amtrak departed. Thus, the Carrier suggests he was not "reasonably available." It was later (at 1150 hours) when the delay for his grain train became excessive that he was instructed to deadhead. At that

time the freight train was the only conveyance available, according to the Carrier.

Of course, the problem with the Carrier's defense is that the factual assertions on which it is based were not made on the property. Thus, they cannot be considered. Since it was essentially un rebutted on the property, the Claimant's assertion must be accepted as fact. As such, the facts establish the relevant rules were violated. The Claimant could have been deadheaded on Amtrak, and accordingly, the rule was violated.

AWARD

The claim is sustained.



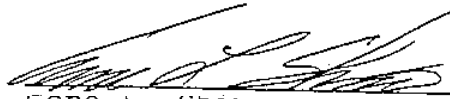
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Gil Vernon, Chairman and  
Neutral Member



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Ron Dean  
Union Member



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Gene L. Shire  
Carrier Member

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Dated: ~~February~~ 31, 1995.