NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6171

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BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BNSF SANTA FE, GENERAL COMMITTEE

and

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

Award No. 6
Case No. 6

Date of Hearing - May 26, 1999
Date of Award - August 31, 1999

Statement of Claim:

Claim No. NS 4555, dated 11-16-91, on behalf of Coast Line Engineer L. E. Bernal, et.al., for a basic day penalty account moved from one train to another train operating in the same direction, when working as an engineer in pool freight service.

FINDINGS:

Public Law Board No. 6171, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On November 16, 1991, the herein Claimant, Engineer L. E. Bernal was called at 11:45 p.m., for duty at Barstow, California to operate train Q-LANY2-16 between Barstow and Needles, California. After departing Barstow at 12:52 a.m., Claimant operated train Q-LANY2-16 eight miles to Dagget, California, where he was taken off his train and placed on a preceding train, QBAHO1-17, which he then operated to Needles. Because he was required to trade trains en route, Claimant filed a basic day penalty claim, contending that Rule 23(l) of the Coast Line Agreement was violated. That claim remained unresolved upon appeal through the procedures provided in the Agreement, and was eventually docketed with this Board for adjudication.

Rule 23(l) of the Coast Line Agreement provides:

RULE 23
HANDLING OF ENGINEERS

Engineers Remain on Assignment Called For.

(l) It is understood that when an engineer is assigned to a run he will at all times remain on his assignment.

The Organization maintains that for over a century, the practice on the Coast Line has been that when an engineer is called for a specific assignment and he departs from a terminal on the assignment called for, he remained on that specific train until he arrived at the end of his run. It contends that in 1991, Carrier unilaterally started changing this long-standing uninterrupted practice, and began trading off engineers en route with other trains, in violation of the specific proscription contained in Rule 23. It argues that the rule is clear and unambiguous, has been in place for a long period of time, and because Carrier unilaterally altered its application, Claimant, and others similarly situated are entitled to a penalty day's pay for each occasion that Carrier required an engineer to trade trains en route.

Carrier acknowledges that Claimant was required to change trains en route, as contended by the Organization. It maintains, however, that the Coast Line Agreement contains no proscriptions against trading trains, and provides no penalty when engineers are required to trade trains en route. Extra compensation can only be provided if the Organization has a rule requiring such payments, Carrier asserts. This is borne out, Carrier notes, from review of the arguments the Organization made in 1984, when arbitrating interdivisional service between Winslow, Arizona and Needles, California, in which case the Organization requested that a penalty payment clause for trading trains be included in the agreement established by the award. It is also borne out by the fact that the Organization has specific provisions in its Agreements covering operations on other Carrier lines that provide for additional compensation for trading trains (in one case extra compensation on a minute basis for all additional time involved and in another a flat allowance of $13.00 for each trade).

With regard to the Organization's contentions that this claim is supported by Rule 23(l), Carrier says that the "only way this rule could conceivably support the Engineers' position would be to read the word 'run' as 'train'." It says that the context of the term "run" used elsewhere in the Agreement makes it impossible to treat "train" and "run" as synonyms.

The Board finds that Carrier's interpretation of Rule 23(l) to be in error. The heading of the rule is often times a sound indicator of the intent of the rule. In this matter the heading of Rule 23(l) is, "Engineers Remain on Assignment Called for." This would indicate that the parties intended that engineers would remain on the assignment called for. The term "run" used in the text of Rule 23(l) must then be read to give some meaning to the intent, as expressed in the heading of the rule. The term "run" must also be given meaning in conjunction with the term "assignment" as used in the rule. If such meaning is not afforded in either context of either term, the entire rule becomes superfluous, because under Carrier's reasoning engineers would not remain with the assignment called for.

Carrier's reading of Rule 23(l) would also make that rule or Rule 23(a) redundant. Rule 23(a) provides that except in an emergency, "employees will be kept on the district to which assigned." Carrier states, in effect, that Rule 23(l) provides for the same result.

Surely, the parties do not need two rules to provide for the same result. Accordingly, they must be given different meanings.

The Board concludes that Rule 23(l) was violated when Claimant was traded from the assignment for which called to another assignment. What remains to be decided is the compensation that should be awarded for this violation. The Organization has requested a penalty payment of a basic day. However, in Case No. 12 (also decided today), involving another claim for trading trains, (for a variety of reasons) the Organization has only requested payment of a 1 hour penalty. One of the reasons being, this was the payment provided when engineers changed engines.

Notwithstanding Carrier's contentions to the contrary, the Board believes that trading trains en route is similar in many respect to exchanging engines at points between terminals of a run. Rule 33 of the parties Agreement provided for an allowance of one hour's pay at pro rata rates when an engine exchange was made. A similar allowance appears to the Board to be appropriate when engineers are not allowed to remain with the assignment (run) called for, as contemplated by Rule 23(l). It should also be noted that the allowance of one hour's pay at pro rata rates would be in keeping with the extra allowance negotiated on other lines by the parties for the same activity.

Accordingly, we will order that Claimant be allowed one hour's pay at pro rata rates because he was not allowed to remain on the assignment called for, as contemplated by Rule 23(l).

A W A R D

Claim sustained.

O R D E R

The Board concludes that an award favorable to Claimant shall be made. Carrier is directed to comply with the Findings of the Board, and make full payment due within 60 days of the date indicated below.

John C. Fletcher, Chairman & Neutral Member

Gene L. Shire, Carrier Member

Richard K. Radek, Employee Member

Dated at Mount Prospect, Illinois., August 31, 1999