

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25065
Docket No. 44630
99-1-97-1-S-6746

The First Division consisted of the regular members and in addition Referee Robert E. Peterson when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union
(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim in behalf of Conductor D. R. Yndestad for 130 miles on September 1, 1995.”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was working in unassigned interdivisional (IU) service between Portage, Wisconsin and St. Paul, Minnesota on the date of claim, September 1, 1995. The Claimant departed Portage as the Conductor on Train No. 393. En route the Claimant was notified to set his train out at River Junction in LaCrosse, Wisconsin, and taxi from such location to St. Paul. While being taxied to St. Paul, the taxi driver received a radio call for the Claimant to call the Dispatcher. Upon stopping and calling the Dispatcher, the Claimant was instructed to go to Hastings, Minnesota to take over as Conductor of Train No. 430, and to bring it into St. Paul because the crew of that train had outlived under the Hours of Service Act.

It is the position of the Organization that the service required of the Claimant in taking Train No. 430 into St. Paul was not an emergency situation and that the proper procedure would have been the utilization of an employee off the road extra board.

The Organization also contends that the Claimant is entitled to payment as claimed under Article XV, Section (b), of the 1994 General Labor Agreement, which rule reads in full as follows:

“ARTICLE XV – TOW-INS

- (a) Road service trainmen who are outlawed under the Hours of Service Act will be allowed the full miles of the run at the applicable rate. Trainmen will also be paid on a minute basis from the time they are outlawed until arrival at their terminal, with a minimum of one hour. Such conductors, firemen, or brakemen will receive 16.25 miles per hour at the applicable rate.
- (b) Road service trainmen who tow-in a disabled train or relieve outlawed trainmen, will receive continuous turnaround mileage at the applicable rate, with not less than a minimum day.

NOTE: This Article supersedes Article VI of the 1985 National Agreement with regard to combined deadhead and service notification for Hours of Service relief.”

The Carrier maintains that the Claimant merely changed trains en route and that he was properly compensated on a continuous time and mileage basis for all service performed from Portage to St. Paul, for a total of 11 hours and 15 minutes. It says Article XV does not apply to the instant dispute, and that a review of Article XV shows that a basic day, as claimed, would only be due if the Claimant would have departed the terminal and then re-entered it.

In study of the record the Board finds that the Carrier has made argument in its ex parte submission that is not shown to have been raised during the handling of the claim on the property. The Carrier, for instance, here says that “it appears that the Claimant’s crew was instructed to park their original train at River Junction because St. Paul Yard was congested” and that “they were then used to move Train No. 430,

which had been previously held out at Hastings, into St. Paul Yard as room permitted.” The Carrier then attempts to use this belated argument in a contention that the Organization has not met the burden of proof “to substantiate their contention that Train 430 was relieved for Hours of Service.” This, notwithstanding that elsewhere in its submission the Carrier relates that upon appeal of the claim that the Organization had contended that the claim involved an Hours of Relief service covered by Article XV of the 1994 Agreement.

In the opinion of the Board, there is reason to conclude that the Claimant had completed his road service assignment for the date in question when he was told to leave his train at LaCrosse and taxi to St. Paul. Therefore, when the Claimant was subsequently instructed, while being taxied to the St. Paul Terminal to officially mark off duty, to instead go to Hastings to relieve an outlawed Conductor and to operate that train into St. Paul, he came to be entitled to an additional basic day for such service pursuant to Section (b) of Article XV. That is, treatment under the rule in a manner that would prevail had the Claimant physically been at St. Paul at the time he was instructed to perform the Hours of Service Act relief service. In making this decision the Board does not pass judgment upon any future argument that may be advanced relative to an employee being instructed to relieve an outlawed employee prior to or at the time that they are instructed to leave or tie-up their train and be taxied to the terminal.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 8th day of November 1999.