Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25187
Docket No. 44862
01-1-99-1-U-2109

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former Chicago and
(Eastern Illinois Railroad Company)

STATEMENT OF CLAIM:

"Claim of Engineer M.W. Landes for 65 miles account being runaround on the Salem Engineers' GXB on August 22, 1997 in violation of Memorandum Agreement dated September 18, 1973 and Side Letter dated January 18, 1978, as well as, Item No. 6 of System Agreement - Claims Handling Process effective June 01, 1996."

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.

On August 22, 1997, Claimant Engineer M. W. Landes stood "first-out" on the Salem Engineers' Guaranteed Extra Board. At 6:19 A.M., Crew Management System (CMS) called the Claimant for Train CKDLR-15. The Claimant advised CMS that he was not qualified for the assignment, at which time CMS called Engineer R. L. Reynolds, the second out engineer on the board for the assignment in place of the

Claimant. A claim was filed on behalf of the Claimant for a runaround payment of 65 miles. The Organization believes that the Claimant who stood first out on the Extra Board should have been called as the working engineer on Train CKDLR-15, with the qualified second out engineer called as a pilot on this train. The Carrier asserts that no Agreement Rule requires it to call an unqualified engineer for service; and that it acted within its preserved management rights when it called Engineer Reynolds, who was the first out qualified engineer.

The Board has studied the record in an attempt to understand how matters such as the situation now before the Board have been handled on this property under existing rules and precedents and how such matters are handled in the industry.

The Guaranteed Extra Board Agreement of the Missouri Pacific Railroad was made applicable to the C&EI territory by Agreement with the BLE, after June 6, 1996. Section 3 OPERATION of the GEB Agreement states that:

> "Engineers on the extra board shall work on a rotary first-in, first-out basis. . . ."

Article 32 of the C&EI Schedule Rules requires that extra Engineers be run 'first-in, first-out':

> "(a) Extra Engineers will be run first-in, first-out on respective districts. All extra boards will be pooled. Extra passenger Engineers will be run first-in, first-out, except running off mileage as a swing crew. This does not apply to branch runs and outside points."

The C&EI Schedule Rule Article 28(a) provides a pilot be assigned whenever an engineer is unacquainted with the territory of the assignment as follows:

> "ARTICLE 28 - Piloting
>
> (a) When engineers are required to run over any portion of the road with which they are unacquainted and it is necessary to furnish a pilot, an engineer assigned to that district will be furnished as pilot, if possible, foreign line trains being detoured included. Engineers

acting as pilots will be paid regular rates for the trip per class of service and engine used."

And the C&EI Agreement applicable to runarounds dated September 18, 1973 states in part:

"In recognition of and in conformity with the long established practice, the following run around rule is adopted effective this date:

(a) Except as permitted under the schedule, engineers in irregular (pool) freight service, unassigned service, or on the extra list who are run around account not called in their turn out of terminal, through no fault of their own, will be paid for fifty (50) miles at the rate of the service they should have been called for and will retain their turn as to other crews or extra men, as the case may be."

The record also establishes that the Carrier initiated operational changes under the Award of Arbitration Board No. 553, creating new ID service, as well as seniority district mergers in 1995. There is no question that the Guaranteed Extra Board Agreement is to be run "first-in, first-out." The Claimant stood "first-out" on the Extra Board and should have been run first out under the language of the Agreement. The Claimant was not qualified over the segment of territory which runs south of Salem. Under Article 28(a) the second-out engineer, Mr. Reynolds, would be paid his regular rate for services as a pilot on the trip where an engineer is unacquainted with a portion of the road. And as a result of running the Claimant as the working engineer for the trip in question, such would be an affirmative step in the process of enabling the Claimant to qualify on the territory in question. There is no question that the Claimant was runaround as such a term is used in this industry. The 1973 Agreement applicable to terminal runarounds appears on its face to apply to the Claimant, "engineers who are runaround account of not called in their turn out of terminal . . ." are entitled to a runaround payment. A limitation exists as to payment in the Rule language "through no fault of their own." There is an implication of fault attributable to the Claimant in the Carrier's arguments. The Carrier argues that since the Claimant lacked qualifications he was not available to work south of Salem. And it argues that the Claimant should have notified the MOP or CMS of his lack of qualifications under Timetable No. 2, page 140. The Claimant complied with Item 7-A of the Timetable No.

2, when he notified CMS of the fact that he was not qualified over the territory in question. No evidence of record exists that it was in any manner the Claimant's fault that he was not qualified over the territory in question. The Carrier's arguments that since he lacked qualifications he was not available is mere loose use of language and devoid of merit. The First Division Awards cited by the Organization support the position that it is incumbent on the Carrier to qualify an individual such as the Claimant, under the circumstances existing on the property in 1997. We have considered the Carrier's case and we find no Rule support or persuasive precedents supportive of its position. Accordingly, we are compelled to sustain the claim on the record before us.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) 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 5th day of March, 2001.