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NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25458
Docket No. 44930
03-1-99-1-U-2141

The First Division consisted of the regular members and in addition Referee Anna S. Kenis when award was rendered.

(Brotherhood of Locomotive Engineers)
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

- “1. Claim of Engineer S. D. Link for a basic day penalty for departing the initial terminal after eight hours of service and exceeding the maximum permissible mileage for all turns while in short turn around service (Labor Relations File No. 1116791).
2. Claim of Engineer C. C. Elledge for four (4) basic days pay:
 - a) For deadheading to Train CCRBV-26
 - b) For departing the initial terminal for an additional turnaround trip after exceeding the permissible mileage.
 - c) For departing the initial terminal after eight hours, while in short turnaround service.
 - d) And for a basic day deadhead, Jefferson City, Missouri, to Dupo, Illinois (Labor Relations File No. 1123307).”

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.

Two claims with similar facts are before the Board. Claimant S. D. Link, a freight service Engineer, operated in the Poplar Bluff, Missouri, to Dupo, Illinois, freight pool. On January 23, 1998, he reported to his home terminal of Poplar Bluff at 2230 hours and was used throughout the course of the day to perform Hours of Service Relief, also known as dogcatch service. The Claimant's first turnaround trip in Hours of Service Relief was to Junland, Missouri, a point 11 miles from the initial terminal. Upon his return to Poplar Bluff, the Claimant provided dogcatch service to Charleston Junction, a location 26 miles from the initial terminal.

After the Claimant returned to Poplar Bluff, he was required to depart a third time, at 0635 hours, to provide Hours of Service Relief at Delta, a location 58.5 miles from the initial terminal. The total time in relief service exceeded eight hours and the total turnaround mileage was 191 miles for the day.

Claimant C. C. Elledge, also a freight service Engineer, operated in the Dupo, Illinois, to Jefferson City freight pool. After reporting to his away terminal of Jefferson City on February 27, 1998 at 530 hours, Claimant Elledge was used to dogcatch three trains. The first two turnaround trips were to Herman, Missouri, a location 42 miles from the initial terminal.

The Claimant was required to depart Jefferson City a third time at 1400 hours for Hours of Service relief at Washington, a location 72 miles from the initial terminal. However, due to his limited hours of service remaining, he was instructed, after arrival at Washington, to proceed to his home terminal of Dupo, Illinois, and tie-up. The Claimant's total time in service exceeded eight hours and the total turnaround mileage was 301 miles for the day.

The Organization contends that both Claimants are entitled to an additional day's pay for exceeding the miles, distance and time limits in short turnaround service as provided in Article 4 (k), as follows:

"CALLING CREWS FOR STRAIGHT AWAY OR TURN-AROUND

Men called in freight service must be notified at the time of call if they are in one-way or turn-around service. Call cannot be changed unless changed before crew arrives at destination or turning point. This does not in any way change side trip or lapback understandings.

k. Engineers in pool or irregular freight service may be called to make short trips and turnarounds with the understanding that one or more turnaround trips may be started out of the same terminal and paid actual miles with a minimum of 100 miles for a day, provided, (1) that the mileage of all the trips does not exceed 100 miles, (2) that the distance run from the terminal to the turning point does not exceed 25 miles, and (3) that engineers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, except as a new day, subject to the first-in, first-out rule or practice."

The Carrier denied the claims, principally because, in its view, the Claimants were not called in short turnaround service as alleged, but were called in Hours of Service Relief. The Carrier argues that the provisions of Article 4(k) do not govern payment for the work claimed and that precedent Awards on this property clearly support that position. It is the Carrier's position that both Claimants were properly paid as they were compensated for actual miles and hours on duty.

The Organization argues that neither history nor precedent supports the distinction maintained by the Carrier between dogcatch service and short turnaround service. In fact, the Organization points out that in 1989, in formulating the System Guaranteed Extra Board Agreement, and in 1995, in formulating interdivisional freight service, the parties expressly agreed that dogcatching was synonymous with short turnaround service. Moreover, the Organization relies upon several awards which, it asserts, have examined this same issue and should be followed based on their compelling logic.

The Board has carefully studied the record, including the awards cited by both parties. We believe the awards relied upon by the Organization are distinguishable from the case at hand and those cited by the Carrier are controlling.

Award 74 of Public Law Board No. 5410 (Twomey) involved different parties, different contract language and different practices. Similarly, while First Division Award 24532 (Richter) involved the same parties as in the instant case, the dispute centered on an Agreement provision which is not at issue herein. We must conclude, therefore, that the findings and decisions in those two cases cited by the Organization are not directly applicable to the matter at bar.

By contrast, there are several Awards on this property which have recognized that Hours of Service Relief is not the same as, or covered by, the short turnaround service call Rule under circumstances similar to the instant case. Three cases have interpreted the contract provision currently in dispute and adopted the Carrier's position. First Division Awards 24830 (Dennis); 24944 (Dennis) and 24745 (Zusman); also see Award 10 of Public Law Board 2703 and Award 3 of Public Law Board 5028. The Organization disagrees with the conclusions reached in these cases, and argues that their logic is unpersuasive, but it has not shown that they are palpably erroneous.

The Board will follow the dispositive precedent on this property. The parties have agreed at the bargaining table that in some circumstances dogcatching can be considered within the short turnaround Rule. For purposes of the System Guaranteed Extra Board Agreement and for certain Interdivisional freight service, for example, there has been specific agreement as to how those two situations mesh. But there has been no agreement by the parties in the present circumstance and accordingly we must be guided by well-established precedent. Any changes must be sought at the bargaining table and not by arbitral fiat.

Finally, there are no provisions for deadhead payments in Article 4(k). To the extent that the claim on behalf of Claimant Elledge seeks a basic day for deadheading, the claim is without agreement support.

In light of the foregoing, we need not address the Carrier's remaining arguments. The claims must be denied in their entirety.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 20th day of August 2003.