Award No. 5300

Docket No. CLX-5285

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

RAILWAY EXPRESS AGENCY, INCORPORATED

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The wage and working agreements were violated through the method used in calculating compensation due train service employe Roy Darnielle regularly assigned to operate on Northern Pacific Railway Trains 401-402-407-408 Portland, Oregon-Seattle, Washington Route for the month of June, 1948.

(b) Management errs in its application of Rule 75 in compensating train service employes where they are called to perform service on a route other than their own, and

(c) Messenger Roy Darnielle shall now be paid the difference between amount actually received and the amount he should have received for service performed for trip made on a route other than his own June 9, 1948, and subsequent thereto until the condition has been corrected.

EMPLOYES' STATEMENT OF FACTS: Messenger Roy Darnielle with basic monthly salary of $293.33 for 190 hours or less is regularly assigned in straight-away service to operate on Northern Pacific Railway Trains 401-402-407-408 Portland, Oregon-Seattle, Washington Route.

While on his lay-over, June 8, 1948, Messenger Darnielle was called to perform service as a guard on Southern Pacific (Pacific Lines) Train 15 Portland-Klamath Falls, Oregon, a route other than his own. He reported at Portland for Train 15 at 7:00 P. M. and was released at Klamath Falls at 8:30 A. M., June 9. The total time for the trip being 13 hours 20 minutes. For this trip he was paid eight (8) hours pro rata at his regular rate of pay and time and one-half for time in excess thereof.

The Carrier notified him to deadhead on the return trip Klamath Falls to Portland. He reported at Klamath Falls for train 20 at 11:15 A. M. on June 9 for the return trip and was released at Portland at 11:10 P. M. on June 9. His total deadhead time on the return trip amounted to 11 hours 55 minutes. For this trip he was compensated at the pro rata rate for the full 11 hours 55 minutes instead of pro rata rate for the first 8 hours and time and one-half time in excess thereof.

Central Train No. 60, December 22, 1938. The employe reported for duty at Cleveland 8:20 A. M. and was released from duty 1:30 P. M. same date, having worked 5 hours 35 minutes for which working trip he was paid a minimum of 8 hours. He returned deadhead to Cleveland on New York Central Train No. 43, checking out of Buffalo at 2:20 P. M. and arriving at Cleveland at 7:10 P. M. He was paid only for the actual hours consumed in making the return deadhead trip, 4 hours and 50 minutes.

It follows therefore that by well established practice and by decisions in cases brought before the United States Railroad Labor Board and Express Board of Adjustment No. 1 the parties have through the years recognized that the guarantees specified in the rules of the various Agreements negotiated by them applicable to **working trips** did not apply in the case of **deadhead hours.** That practice of long standing form a part of the Agreement between the parties has been well established by many Awards of the National Railroad Adjustment Board, Third Division. Typical are the remarks of Referee Jay S. Parker in Award No. 4086 when he said:

> "* * * When a contract is negotiated and long existing practices are not abrogated or changed by its terms, such practices are deemed to have been within the contemplation of the parties and approved. Indeed, there is sound precedent for giving them the same force and effect as if they had been incorporated within the terms of the contract itself. See Awards 2436, 1397, 1252, 507. What has just been stated is all the more true when—as here—in addition to long continued acquiescence prior to the filing of a claim the parties have since revised the working Agreement, then in force and effect, without abrogating or doing away with the practices of which they then and now complain."

The claim in the instant case is wholly without merit and should be denied on the ground that there has been no violation of Rule 75 as alleged; that payments to employe Darnielle were proper and in conformity with the provisions of Rule 75(b) as written and as interpreted by the parties dating back to the time of the first Agreement effective February 15, 1920.

(Exhibits not reproduced.)

OPINION OF BOARD: The question here presented is whether an employe who has performed that type of service referred to in Rule 75 (b) of the Schedule and who returns to his duty station by way of deadheading should be compensated in the manner prescribed in said rule for the "going" trip.

It will be noted under such circumstances two (2) trips are involved and the rule plainly states the employe will be compensated for each, whether the employe is deadheading or actively working he is unquestionably in a duty status and hence is performing service. It will be further noted the rule does not describe, qualify, or limit the word service as used in the rule.

Carrier's plea to dismiss that portion of part (c) of claim herein reading "and subsequent thereto until the condition has been corrected" is overruled in that nothing we have said in the above and foregoing Opinion is to be construed as applicable to other than the factual situation here presented in reference to the particular individual therein mentioned.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act. as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

It is accordingly ordered by the Board that claim herein be and it is hereby sustained to the extent indicated in the above and foregoing Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 30th day of March, 1951.