

PUBLIC LAW BOARD NO. 5335

AWARD NO . 10
Case No. 10

PARTIES) United Transportation Union
TO)
DISPUTE) Duluth, Missabe & Iron Range Railway Company

STATEMENT OF CLAIM:

Allow 25 miles for the Missabe trainmen listed,
employed in All-Rail, Dog Catcher service, account of being
instructed, upon delivering train to South Itasca
(Interchange Point), to return engines to Proctor, their on
and off duty point.
(From Organization's Submission)

FINDINGS:

Upon the whole record, after hearing, the Board finds the
parties herein are Carrier and Employees within the meaning of
the Railway Labor Act, as amended, and that this Board is duly
constituted under Public Law No. 89-456 and has jurisdiction of
the parties and the subject matter

These claims involve train crew members of Minntac All-Rail
Dogcatcher jobs. These crews were deadheaded from Proctor to
Minntac and operated ore trains from Minntac to South Itasca
where the trains were interchanged to a connecting carrier.

Unlike the crews in Award No. 4 (Case No. 4), who operated
trains using run-through power and were transported by
carrier-furnished van from the interchange point back to Proctor,
the crews in the instant case were using DM&IR power. At South
Itasca, the crews delivered their trains in interchange, detached
their locomotive consist and returned to Proctor on the DM&IR
locomotive, rather than being transported by van.

Claimant Missabe Division trainmen herein seek 25 lap miles,
in addition to other time already allowed, for running the light
engine from South Itasca to Proctor in order to return the
locomotive to Proctor Terminal.

ORGANIZATION'S POSITION:

The Organization contends that when Carrier's Dispatcher
ordered the Claimant crews to return their locomotive to Proctor
after delivering their trains at South Itasca, South Itasca
became an intermediate turning point and Proctor then became the
final terminal for these crews. The Organization submits that

final terminal delay then should properly start at the switch to the tie-up track at Proctor and Claimants are entitled to an additional 25 road miles (23 miles, South Itasca to Proctor, plus 2 miles to reach the tie-up track).

The Organization relies upon Rule 43 (a) and Rule 44 (a), which read, as follows:

"Rule 43. (a) In all service mileage will cease where terminal or turning point time begins and terminal or turning point time will cease where mileage begins."

"Rule 44 (a) Except as otherwise provided for in Rules 26, 34 and 43, turning points will be considered intermediate points for all trains and delay time allowed."

In addition, the Organization notes that the 1965 Local Agreement covering All-Rail Turnaround Service from the Interstate Branch specifically provided that these crews:

". . . may move their engine and caboose between Proctor or Steelton and the interchange point. . . ."

However, the 1985 Local Minntac All-Rail Agreement contained no reference to movement of locomotives between Proctor and points on the Interstate Branch, such as South Itasca. That agreement provided for delay time to be paid, as follows:

"Delay time south of Adolph	Actual time
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* * *

"Beginning and ending of delay for dogcatcher crew:

* * *

"Delay begins when passing Adolph southbound.
Delay ends when alighting from van at Proctor."

This, Organization contends, demonstrates that the drafters of the 1985 Local Agreement did not contemplate dogcatcher crews moving their engine back to Proctor and thus, Carrier violated the June 6, 1985 Local Agreement by ordering the Claimant crews to do so and not paying them in accordance with existing rules.

The Organization points out that the Carrier, in denying the claims on the property, acknowledged that Proctor is the final terminal for these dogcatcher crews. It, therefore, stands to

reason that if Proctor is the final terminal, final terminal delay pay does not start at South Itasca, but at Proctor. South Itasca must, likewise, then be considered an intermediate turning point. The Organization argues that there can only be one final terminal and that is Proctor, and final terminal delay should properly begin at the switch to the tie-up track at Proctor.

The Organization urges the Board to follow the reasoning expressed in Award No. 8 of Public Law Board 4674, which held that when the point for the beginning of final terminal delay for Minntac All-Rail dogcatcher crews was moved from Adolph to South Itasca by the May 19, 1986 BLE National Agreement, the dogcatcher crews were entitled to an additional 23 miles pay from Adolph to South Itasca. By the same token, the Organization asserts, the moving of the point for the beginning of final terminal delay from South Itasca to Proctor, requires Carrier to pay Claimants an additional 25 miles pay from South Itasca to the tie-up track at Proctor.

CARRIER'S POSITION:

Carrier takes the position that having the crew return on its locomotive to Proctor does not change in any way the calculation of final terminal delay for Minntac All-Rail Dogcatcher crews.

Carrier cites Questions and Answers 2 and 4 (involving Article V - Final Terminal Delay, Freight Service) of the Joint Interpretation Committee established by the October 31, 1985 UTU National Agreement (Kasher-Peterson) to support its position.

Question No. 4 addressed the following:

"'4. At what point does computation of final terminal delay begin for crews who deliver their over-the-road train to a connecting carrier in pursuance of the "solid train" provisions of Article VII of the January 27, 1972 National Agreement?"

FINDINGS:

* * *

Since the purpose of Article V of the October 31, 1985 Agreement was to remove restrictions contained in any existing rules or recognized practices so as to establish a uniform national rule, it must be concluded that the point for computation of final terminal delay for crews who deliver and yard their train in a foreign railroad in

pursuance of the 'solid train' provisions of Article VII of the January 27, 1972 National Agreement is as set forth in Section 1 of Article V of the October 31, 1985 Mediation Agreement, i.e., the switch used in entering the final yard where the train is to be left or yarded, except in this instance it would be the yard of a connecting carrier."

Carrier argues that its computation of final terminal delay time from the time the dogcatcher crews reach the switch at South Itasca, where the train is delivered in interchange to a foreign carrier, until the crew is relieved at Proctor is proper, under the above findings. It is irrelevant, whether the crew uses run-through power and is transported back to Proctor, or whether the crew uses DM&IR power and returns with the locomotive to Proctor. The mere fact that they return their engine to Proctor does not change the point where final terminal delay begins.

The 1965 Local Agreement recognized that crews could operate engines and cabooses back and forth between the interchange point and Proctor.

The 1985 Local Minntac All-Rail Agreement did not prohibit crews from operating the locomotive back to Proctor. The 1985 Local Agreement was a more specific agreement which dealt with the compensation for Minntac All-Rail assignments. Items in the 1965 Agreement, which were not specifically overridden by the 1985 Agreement, remained unchanged, such as the movement of locomotives between Proctor and the interchange point. The Carrier did not waive its right to have crews do this. Carrier contends that it retains rights which it has not specifically bargained away.

Carrier maintains that it has properly calculated final terminal delay as beginning at South Itasca and no additional pay is due Claimants.

OPINION OF THE BOARD:

Based upon the record, the first agreement covering the handling of unit trains of ore which were interchanged to connecting carriers on the Interstate Branch was negotiated in July 1965. That agreement provided for actual mileage between Adolph and the turning (loading) point under existing agreements and provided for payment of terminal delay time for all delay time south of Adolph. The agreement provided that crews assigned to the ore pool out of Proctor (or extra crews) would be called for this service. It also stated that these crews ". . . may move their engines and cabooses between Proctor or Steelton and the interchange point." For crews operating out of Proctor,

Proctor was, thus, the on-duty and off-duty point. On the other hand, if crews were to be transported to or from the interchange point by Carrier vehicle, the agreement provided that the interchange point would be the on-duty and off-duty point and the crews would be paid an arbitrary allowance of 45 minutes each way or time consumed, whichever was greater. It is noted that this allowance applied only to crews transported by company vehicle -- no allowance was provided for crews who operated their engines and cabooses between Proctor and the interchange point.

In June 1985, the parties reached agreement on the method of compensation specifically for Minntac All-Rail assignments. This agreement also specifically addressed dogcatcher crews operating in this service. The 1985 Local Agreement did not totally supplant the 1965 Local Agreement, however, as the more recent and more specific agreement, it did supersede some provisions of the 1965 Agreement. Most notably it provided that dogcatcher crews being transported from the interchange point back to Proctor by Carrier van would remain on final terminal delay, which still began at Adolph, until they alighted from the van at Proctor. Therefore, under the 1985 Local Agreement, crews being transported from the interchange point back to Proctor would remain on-duty and under terminal delay pay rather than go off-duty at the interchange point and receive the arbitrary allowance for being transported. It is noted that the 1985 Local Agreement was silent with regard to crews which operated their own engine between the interchange point and Proctor; therefore, the 1965 Local Agreement provisions covering this were not altered in any way by the 1985 Agreement. Following the 1985 Local Agreement, all crews, whether they operated or were transported back to Proctor, remained on-duty and under final terminal delay until they reached Proctor.

Later in 1985, the October 31, 1985 UTU National Agreement became applicable. The National Agreement, as interpreted by Award No. 7 of Public Law Board No. 4674, moved the point where final terminal delay began from Adolph to the switch at South Itasca where the unit train was yarded and also provided that no final terminal delay pay would be allowed for the first sixty (60) minutes of delay. It further provided that terminal delay would be calculated until the crew was finally relieved from duty. This was consistent with the 1985 Local Agreement and revised 1965 Local Agreement that continued terminal delay pay until the crews went off-duty at Proctor.

The Disputes Committee decision in Question and Answer No. 4, confirmed and clarified that final terminal delay would begin at the switch to the yard where unit trains are delivered in interchange to foreign carriers. Neither the 1985 National Agreement, Award No. 7 of Public Law Board No. 4674, nor the

decision of the Disputes Committee made any distinction regarding the method by which the crews returned to their off-duty point, whether operating their locomotive or being transported by Carrier vehicle.

After analyzing all of the pertinent agreements, awards and Disputes Committee decisions, the Board concludes that Claimant crews went on final terminal delay at South Itasca Yard, the point where they yarded their train in interchange to a foreign carrier and the crew remained under final terminal delay pay until they were relieved from duty at Proctor.

The Board can find nothing in any of the agreements or awards which would support the Organization's contention that because the Claimant crews operated their engine back to Proctor rather than being transported, that the point for the beginning of final terminal delay was moved from South Itasca to Proctor. None of the aforementioned agreements provide for terminal delay to begin at Proctor and this Board does not have the authority to arbitrarily establish such a provision.

Since Claimant crews remained under final terminal delay during the time they operated their engine from South Itasca back to Proctor, there is no basis for the mileage pay (25 miles) sought by Claimants, as confirmed by Rule 43. (a):

"In all service mileage will cease where terminal or turning point time begins and terminal or turning point time will cease where mileage begins." (emphasis added)

Therefore, the claims must be denied.

AWARD: Claims denied.



R. E. Adams, Carrier Member



Bruce Wigent, Organization Member



John F. Hennecke, Chairman and Neutral

Dated: July 19, 1993