

PUBLIC LAW BOARD NO. 5335

AWARD NO. 4  
Case No. 4

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

STATEMENT OF CLAIM:

Allow miles claimed at outside terminal rate of pay for the trainmen listed, for deadheading from various points on the Interstate Branch to Proctor. In a letter of confirmation of payment for "All-Rail" movement of June 6, 1985, the Carrier agreed to pay all delay time south of M.P. 11 (Adolph). The November 1, 1985 National Agreement gave the Carrier relief only at the final terminal (ie., R23, R16, R11, etc.). Deadheading to Proctor is not part of that final terminal delay, therefore the Carrier is in violation of Article VI, Section 1 (a) of the 1985 National Agreement. (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.

The instant claims involve dogcatcher crews in Minntac All-Rail Service. Carrier serves a United States Steel plant, located in Minntac, which produces taconite. While most taconite tonnage handled by the Carrier is transported to the Ports of Duluth and Two Harbors, a significant amount of the taconite produced at Minntac is destined for steel plants which are not accessible by water routes. These "all-rail" shipments are unit taconite trains which Carrier delivers in interchange to the Chicago & North Western Transportation Company (C&NW) and Wisconsin Central Limited (WC). The interchange points with these carriers are located at the south end of Carrier's system on the Interstate Branch.

Crews assigned to handle these unit taconite trains report for duty at Proctor and are transported by a van, provided by the Carrier, to the interchange point, where they take charge of the empty train received in interchange from the aforementioned connecting carriers. This crew operates the empty train set some 87 miles to the Minntac plant, where the train is loaded for return to the interchange point. Usually the initial crew must be relieved under the Federal Hours of Service Law at or near the

taconite plant. Whereupon a relief crew, which also originates at Proctor, is transported by Carrier to relieve the initial crew, which is in turn, transported by Carrier back to Proctor. These relief crews, known as "All-Rail Dogcatchers", operate the loaded taconite trains back to the interchange point and are then transported by Carrier back to Proctor.

In July 1965, the Carrier and the Order of Railway Conductors and Brakemen (ORC&B) and the Brotherhood of Railroad Trainmen (BRT), both of which subsequently became a part of the formation of the United Transportation Union (UTU), wrote an agreement to establish the rules, rates of pay, and working conditions for crews working in "all-rail" turnaround service between interchange points on the Interstate Branch and loading points on the north end. The agreement provided that:

"Crews may handle a unit train from an interchange point to a north end point, may handle the same or another unit train from such north end point to any of our points of interchange, and may move their engine and caboose between Proctor or Steelton and the interchange point. Such crews shall be operated and compensated on a continuous time basis under existing agreement rules, rates of pay, and working conditions applicable to road service, subject to the following:

I. Actual mileage traveled

- A. The actual mileage traveled between Adolph (Mile Post 11) and the turning point shall be paid for at the appropriate road rates of pay.

II. Delays

A. Initial and Final Terminal

- 1. All delay time south of Adolph (Mile Post 11) including preparatory time will be paid for on the minute basis at 1/8th of the daily outside terminal yard rates of pay.

B. Turning Point

- 1. Crew shall be allowed an arbitrary allowance of two hours and 30 minutes or the actual time delayed, whichever is greater, at appropriate road rates for all time consumed and for all work performed at turning point. Crew may be required to move train under loading pockets at the plant site during loading operations.

C. Other Delays

- 1. Delays payable under existing agreements at points other than those covered by paragraphs

A and B of this Section II shall be paid for on the basis of the actual time delayed at the appropriate road rates.

### III. Transportation

- A. Crews going on and off duty at Steelton or the interchange point on the Interstate Branch shall report at Proctor and will be transported by Company vehicle between Proctor and Steelton or the interchange point. They will be allowed an arbitrary allowance of 45 minutes or time consumed, whichever is greater, at appropriate outside terminal yard rates each way for deadhead trip between Proctor and Steelton or the interchange point. Service time shall commence at the time crew arrives at Steelton or the interchange point and shall continue until the time they are relieved from duty at the interchange point or Steelton."

Under the 1965 Agreement, crews reported at Proctor and were transported by company vehicle to Steelton or the interchange point, where they went on-duty. Likewise, crews went off-duty at Steelton or the interchange point and were transported back to Proctor. For the time spent being transported to and from Proctor, they were paid deadhead of 45 minutes or actual time, whichever was greater, each way. The 1965 Agreement made no mention of "dogcatching" crews.

In June 1985, the parties, along with the Brotherhood of Locomotive Engineers (BLE), reached an agreement covering "all-rail" movements between the Interstate Branch and Minntac. This agreement specified the compensation that would be paid to crews operating in this service and established a specific method of compensation for relief crews operating as dogcatchers, as follows:

"If such trains are required to be brought in by dogcatchers from a north-end point, such relief crews will be compensated as follows:

Pay Item	Time or Miles
Deadhead, Proctor to north-end point	65 miles
Preparatory Time	1/2 hour engine crew only
On duty before leaving	1/2 hour
Delay at Minntac	Actual time

Allowance for relaying car weights, if required	-0- engine crew 6 miles, train crew
Running miles, Minntac to Adolph	100 miles
Delay time south of Adolph	Actual time
Voluntary concession	5 miles
Arbitrary Allowance for time and mileage trips	5 miles, engine crew only
Inspection time	30 minutes, engine crew only

The above relief crew pay items apply to the engine crew and the train crew, unless otherwise specified. All rates are road rates.

Beginning and ending of delay for initial crew:

Passing Adolph ends delay for northbound train.  
Passing Wacotah Spur begins delay northbound.  
Boarding of conveyance for return to Proctor ends  
delay.

Beginning and ending of delay for dogcatcher crew:

Delay at Minntac begins when first crew member alights  
from conveyance.  
Delay at Minntac ends when caboose makes its first  
start.  
Delay begins when passing Adolph southbound.  
Delay ends when alighting from van at Proctor."

It is noted that under the July 1965 Local Agreement, crews operating south to the interchange point went on final terminal delay at Adolph (Mile Post 11) and they were relieved from duty at Steelton or the interchange point and then deadheaded back to Proctor. Under the June 1985 Local Agreement, dogcatcher crews began final terminal delay at Adolph and continued on terminal delay until they alighted from the van at Proctor. While the agreement made provision for deadheading from Proctor to the north-end point, where the relief crews took control of their trains, no provision was made for deadheading from the interchange point back to Proctor at the end of their tour of duty.

On October 31, 1985, a National Agreement between the UTC

and the carriers represented by the National Carriers Conference Committee (which included the DM&IR) was signed. This agreement modified a number of rules, including final terminal delay rules. Under the 1985 UTU National Agreement, Carrier concluded that final terminal delay for Minntac All-Rail assignments would begin when the engine reached the switch at the interchange yard, not at Adolph, as had been prescribed in the earlier 1965 and 1985 Local Agreements. In addition, the 1985 National Agreement eliminated payment for the first sixty (60) minutes of final terminal delay. As a result, these Minntac All-Rail assignments, which had been receiving final terminal delay pay from Adolph until they alighted from the van at Proctor, now were receiving no final terminal delay payment inasmuch as the crews normally consumed less than sixty (60) minutes from the time they reached the switch at the interchange yard until they arrived at Proctor.

#### ORGANIZATION'S POSITION:

The Organization's basic contention in this case is that, with the demise of the final terminal delay payment provided under the June 1985 Local Agreement, the Minntac All-Rail crews (in this case, the relief crews in dogcatcher service) must be considered to be relieved from duty at the interchange point and the time and miles spent being transported by Carrier vehicle back to Proctor must be considered deadhead service, for which Claimants seek an additional 11 (WC) or 23 (C&NW) miles deadhead pay at the outside terminal rate, alleging Carrier has violated Article VI, Section 1 (a) of the 1985 UTU National Agreement. To support its claims, the Organization, in its submission, contends that final terminal delay pay ends when the crew alights from the engine at the interchange point and that the transportation from the interchange point back to Proctor is subject to the deadhead rule and the Claimants are entitled to the additional compensation sought in these claims.

#### CARRIER'S POSITION:

Carrier, on the other hand, contends that nothing in the 1985 UTU National Agreement changed the point where crews are relieved from duty. Minntac All-Rail dogcatchers are still covered under the terminal delay rules until they alight from the van after being transported to Proctor. Carrier points to the July 1985 Local (Minntac All-Rail) Agreement which states:

"Beginning and ending of delay for dogcatcher crew:

\* \* \*

"Delay ends when alighting from van at Proctor."

Carrier argues that since the crew is covered under the final terminal delay rules on a continuous time basis until they reach Proctor, they cannot be considered as having been relieved from duty at the interchange point, as contended by the Organization. They point out that the Organization acknowledges in its own submission that:

"Final Terminal Delay (FTD) was allowed and began at Mile Post 11, and continued until alighting from van at Proctor."  
(Organization's Submission, page 3)

prior to the changes in the final terminal delay rules in the 1985 UTU National Agreement. Carrier argues that there is no contractual or logical basis for the Organization to now contend that:

"The amended Agreement of June 6, 1985 did not contemplate any sixty (60) minute give back (FTD), as allowed in the 1985 National Agreement. Not-with-standing, the integrity of the original or amended agreements lay unfractured by the National Agreement, and did not negate the intended and agreed to payment due these crews for return to Proctor. FTD ends when crew alight engine."  
(Organization's Submission, pages 3, 4)

Carrier states that Claimant crews were not ordered to deadhead, but were transported, at Carrier expense, on a continuous time basis. Carrier cites numerous awards which they contend support their argument that crews transported in continuous service are not in a deadhead status and not subject to deadhead pay provisions.

Finally, Carrier contends that awards of Public Law Board No. 4674 (BLE v. DM&IR) involving these identical local agreements and National Agreements with identical language concerning FTD and Deadheading, supports Carrier's position that Carrier has properly applied the FTD provisions of the National Agreement and no deadhead compensation is due the Claimant crews.

#### OPINION OF THE BOARD:

The critical issue to be resolved by this Board is whether the Claimant crews, who were transported from the interchange point back to Proctor, were in continuous service, subject to the final terminal delay rules until they were relieved from duty when they alighted from the van at Proctor, as contended by the Carrier, or whether they were relieved from duty and, thus, no longer subject to FTD rules at the interchange point and

therefore must be considered in deadhead service while being transported from the interchange point to Proctor, as contended by the Organization.

The Board finds the Carrier's position to be the more persuasive. Clearly, prior to the implementation of the new final terminal delay rules in the 1985 UTU National Agreement, Claimant crews were considered to be in continuous service and receiving final terminal delay pay from the time they reached Adolph (M.P. 11), while delivering their unit train in interchange to a connecting carrier, while being transported back to Proctor and until they alighted from the van at Proctor. The Organization confirms this in its submission. The amendments to the final terminal delay rules included in the 1985 UTU National Agreement substantially changed the method of computing final terminal delay pay under the parties' local agreements. First, the point where FTD began was moved from Adolph to the switch used to enter the yard at the interchange point. Second, whereas previously all terminal delay time had been paid for, the new FTD rules provided only for payment in excess of sixty (60) minutes. The net effect of this rule change was to substantially reduce the amount of terminal delay pay received by Claimants. However, the change in the method of paying FTD did not change the point where FTD ended nor where Claimant crews were relieved from duty--that point continues to be Proctor. In Award 7 of Public Law Board No. 4674 (Referee Robert M. O'Brien), involving the BLE and the DM&IR, the Board found:

"The Carrier's crews operating in All-Rail Service report for duty at Proctor Yard and are transported to South Itasca where they board their train. When they return to South Itasca, these crews are transported back to Proctor where they go off duty . . . . (emphasis of Board)

\* \* \*

"Therefore, final terminal delay begins at South Itasca, not at Adolph as was the case under the June 6, 1985, letter agreement. . . . Inasmuch as these dogcatcher crews are relieved from duty within 60 minutes from the time their locomotive reaches the switch at South Itasca Yard, under Section 1 of Article V of the BLE National Agreement dated May 19, 1986, they are not entitled to any final terminal delay pay. . . ."

Boards have consistently held that transportation to or from a work point in a carrier furnished vehicle does not automatically place crews in a deadhead status. In Award No. 4 of Public Law Board No. 1738 (Harold Weston), relied upon in Award No. 19 of Public Law Board No. 2690 (C. Robert Roadley), it

was held:

"The great majority of the considerable number of awards that have passed upon this issue have held that employees not ordered to deadhead but transported on a continuous time basis after reporting for duty are not deadheaded and therefore are not entitled to the deadhead allowance."

Award No. 40 of Public Law Board No. 959 (Referee John B. Criswell) held:

". . . In Award 24 of P.L. Board 922, Referee Nicholas H. Zumas said '. . . being transported by taxicab between two points within their assigned territorial limits during the course of their tour of duty does not place claimants in deadhead status.' See First Division awards No. 20264, and No. 20829. Similarly Award 40, P.L. Board 400, with Neutral David R. Douglass.

"It is this Board's opinion that claimant was not placed in deadhead service when he was transported in an automobile from Old Fort to Asheville to complete the turnaround trip for which he was called."

This Board concludes that Claimants were being transported from the interchange point to Proctor as a part of their regular assignment, as provided for in the June 6, 1985 Local Agreement and such time was covered under the provisions of the final terminal delay rules and, therefore, Claimants were not in a deadhead status. Even though the subsequent National Agreement provided that pay for final terminal delay would not accrue until after the expiration of sixty (60) minutes, this did not in any way alter the Claimants' status of being in continuous service, did not change Proctor as being the point where they were relieved from duty and did not place them in a deadhead status while being transported from the interchange point back to Proctor. Therefore, based upon the foregoing, these claims will be denied.

AWARD: Claims denied.

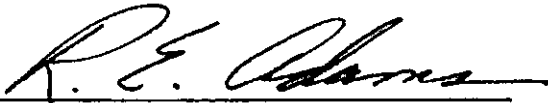


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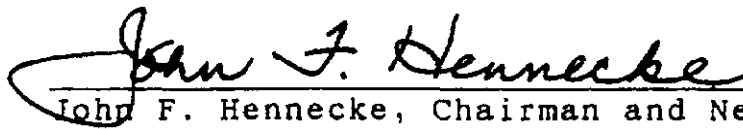
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R. E. Adams, Carrier Member



Bruce Wigent, Organization Member



John F. Hennecke, Chairman and Neutral

Dated:  , 1993