

PUBLIC LAW BOARD NO. 5335

AWARD NO. 5
Case No. 5

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

STATEMENT OF CLAIM:

Allow eight (8) miles for each Conductor or Trainman employed on each All-Rail Dogcatcher crew. Carrier has deducted eight miles each day for each crewman, claiming that the Basic Day has risen from 100 miles to 108 miles since the original agreement.

PLB #4674 mentions nothing of a Basic Day; rather, it is specific in its finding: "Therefore, dogcatcher crews are entitled to 100 miles from Minntac to Adolph and an additional 23 miles from Adolph to South Itasca." Carrier has deducted 8 miles from the total of 123 miles, paying only 115 to each crewman.

Claimants are entitled to the miles they have earned, and should be paid.
(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 claims in this case involve dogcatcher crews in Minntac All-Rail Service, the same service as Award N. 4 (Case No. 4) of this Board.

In the instant claims, the Organization alleges that Carrier has improperly deducted eight (8) miles compensation from Claimants on each claim date. The Organization contends that the language of the June 6, 1985 Local Agreement (see Award No. 4) provided that dogcatcher crews on Minntac All-Rail assignments would receive 100 miles for service performed in taking control of their train at the point where they relieve the initial crew and operating such train to Adolph (Mile Post 11). Under the June 6, 1985 Local Agreement, these crews were placed under final terminal delay rules and pay from Adolph until they alighted from the van that transported them from the interchange point (in this case, South Itasca) to Proctor.

On October 31, 1985, a new UTU National Agreement was signed with this Carrier and Organization both being parties to that agreement. The new national agreement made changes in numerous rules affecting the parties, including Final Terminal Delay and Basic Day.

A dispute between Carrier and the Brotherhood of Locomotive Engineers (BLE) involving Carrier's implementation of certain changes in the computation of final terminal delay for dogcatcher crews operating on Minntac All-Rail jobs, resulted in the issuance of Award No. 7 of Public Law Board No. 4674. In that award, Referee Robert M. O'Brien stated:

"As observed heretofore, under Article V of the May 19, 1986 , BLE National Agreement final terminal delay begins when the engine reaches the switch used to enter the final terminal yard where the train is to be yarded and the first 60 minutes of such time is not payable. The switch used to enter the final terminal yard where trains used in All-Rail Service are to be yarded is located at South Itasca, not at Adolph as the Organization contends. Therefore, final terminal delay begins at South Itasca, not at Adolph as was the case under the June 6, 1985, letter agreement. Adolph is simply not the entrance switch connection to the last train yard where dogcatcher crews used in All-Rail Service yard their trains. 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. The instant claim must be denied as a result."

In a companion case which was handled in Award No. 8 of that same Board, the issue of compensation to these dogcatcher crews from Adolph, the point where final terminal delay had begun prior to the national agreement, and South Itasca, the point where Award No. 7 found final terminal delay to properly begin following the national agreement, was addressed. In Award No. 8, Public Law Board No. 4674 held:

"The June 6, 1985, letter agreement specifically states that dogcatcher crews who relieve other crews used in All-Rail Service will be compensated 100 miles for operating from Minntac to Adolph. This provision of the June 6, 1985, letter agreement is clear and specific and must therefore be given effect even though Adolph is no longer the final terminal delay point for dogcatcher crews used to relieve crews operating in All-Rail Service. It must be stressed that the letter agreement does not state that the dogcatcher crews in All-Rail Service will be compensated in accordance

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with rules on this property governing runs of less than 100 miles. (It is 87 miles from Minntac to South Itasca.) Rather, it expressly states that these crews shall receive 100 miles from Minntac to Adolph. Therefore, dogcatcher crews are entitled to 100 miles from Minntac to Adolph and an additional 23 miles from Adolph to South Itasca."

The Organization contends that the June 6, 1985 Local Agreement, as interpreted by Awards 7 and 8 of P. L. Board 4674, requires Carrier to pay these dogcatcher crews 100 miles for service between Minntac and Adolph (M.P. 11), plus an additional 23 miles from Adolph to South Itasca. The Organization alleges that Carrier has arbitrarily reduced the Claimant crews' pay from 123 miles to 115 miles and there is no contractual basis for this reduction by the Carrier.

Carrier responds by stating that it has not reduced the number of miles being paid to these Minntac All-Rail dogcatcher crews. Carrier has attached a copy of certain payroll records, which were provided to the Organization in this, and a previous dispute of the same nature, which shows that these crews are in fact paid 123 miles. Carrier further argues that changes in the number of miles constituting a basic day, which were included in the 1985 UTU National Agreement, have reduced the amount of compensation paid to the Claimant crews, but not the number of miles paid. The changes to the Basic Day, which Carrier refers to, were in Article IV-Pay Rules, Section 2, which reads as follows:

"Section 2 - Miles in Basic Day and Overtime Divisor

(a) The miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed as provided below:

Effective Date of Change	Through Freight Service	
	Miles in Basic Day	Overtime Divisor
November 1, 1985	102	12.75
July 1, 1986	104	13.0
July 1, 1987	106	13.25
July 1, 1988	108	13.5"

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Carrier states that on claim dates here involved (June 1992), Claimants' pay was calculated by taking the 100 miles for service between Minntac and Adolph and adding 23 miles from Adolph to South Itasca for a total of 123 miles. Carrier allows a basic day payment for the first 108 miles and then takes the remaining miles ($123 - 108 = 15$) and pays 15 miles at the frozen "overmiles" rate. Carrier maintains this is the proper method of computing Claimants' pay and that there is no valid alternative to Carrier's method of payment.

The Organization countered during the hearing by arguing that the 100 miles for service between Minntac and Adolph provided for in the June 6, 1985 Local Agreement was intended to be a basic day and therefore, with the addition of the 23 miles which Award No. 8 of P. L. Board 4674 provided for operating from Adolph to South Itasca, Claimants are entitled to receive a basic day (without regard to the number of miles which may constitute a basic day) and, in addition thereto, 23 miles for operating between Adolph and South Itasca.

Carrier responds by pointing out that the Carrier advanced the position that the 100 miles provided for service between Minntac and Adolph (a distance of approximately 64 miles) was in fact a "basic day"; however, Carrier's position was rejected in Award No. 8 of Public Law Board No. 4674 wherein the Board held:

" . . . It must be stressed that the letter agreement does not state that the dogcatcher crews in All-Rail Service will be compensated in accordance with rules on this property governing runs of less than 100 miles. . . . Rather, it expressly states these crews shall receive 100 miles from Minntac to Adolph. Therefore, dogcatcher crews are entitled to 100 miles from Minntac to Adolph and an additional 23 miles from Adolph to South Itasca."

In addition, the Carrier points to a similar dispute, involving the method of applying changes to the number of miles which make up a basic day, which was submitted to the BLE and NCCC 1986 National Agreement Informal Disputes Committee. The Committee, in its decision in Issue No. 8 held:

" . . . If this Committee were to endorse the Organization's interpretation of Rule 26, we would effectively transform the fixed mileage guarantee from 153 miles to 159 miles (under the current basic day of 106 miles). . . ."

Carrier states that, in the same manner, the Organization, in this claim, seeks to increase the payment to these crews from 123 miles to 131 miles, which this Board does not have the authority to do.

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The Carrier also cites and relies upon the findings of Award No. 9 of Public Law Board No. 4760 (BLE v. ICG, Referee Robert O. Harris). The pertinent portions of that award are, as follows:

"Simply stated, this claim is based upon the fact that in the last national agreement the basic day of 100 miles was changed to a basic day of 106 miles. The Carrier continued to pay overtime on the basis of a one hundred mile basic day; however, it has taken the position that the agreement only calls for payment of 125 miles and since the basic day is now 106 miles it is only required to compensate engineers for 19 rather than 25 additional miles. It claims that were it to do otherwise, it would be paying for 131 miles for the basic day.

* * *

". . . Accordingly, the Organization contends that the 25 mile additional compensation should not be reduced because the mileage for the basic day was increased.

* * *

"In this case the agreement speaks in terms of paying for 125 miles. That is the Carrier obligation. It may be that a literal reading of the agreement now diminishes the amount received by Claimant; however, that is how the agreement reads and the Organization must accept the detriment of the contract language as it accepts the benefit of no change in regard to overtime payments of that language.

"The claim is denied."

OPINION OF THE BOARD:

Based upon the entire record and all of the evidence and arguments submitted to this Board, both written and oral, this Board finds that Carrier has properly computed the compensation of the Claimants under the governing agreements.

In light of the findings of Award No. 8 of Public Law Board No. 4674, involving the same June 6, 1985 Local Agreement, the Board cannot accept the Organization's position that the 100 miles provided for dogcatcher service in that agreement was intended to be a basic day and therefore considered separate and apart from the additional 23 miles from Adolph to South Itasca, which that award found Minntac All-Rail Dogcatcher crews to be

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entitled to receive following the change in the point where final terminal delay begins for these crews.

We believe Carrier is correct when it asserts that if the 100 miles was intended to be a basic day payment for crews operating less than 100 miles, then these dogcatcher crews would be entitled to receive only a basic day, with no overmiles whatsoever, since the total mileage from Minntac to South Itasca is only 87 miles.

This Board concurs with the findings of the BLE National Agreement Informal Disputes Committee and Award No. 9 of Public Law Board No. 4760 that to accept the Organization's position would, in effect, increase the mileage of this assignment from 123 miles to 131 miles, which this Board is not empowered to do.

Under the June 6, 1985 Local Agreement and Award 8 of Public Law Board No. 4674, Claimants are entitled to receive 123 miles. The number of miles was thereby fixed. However, the amount of compensation which Claimants receive for those miles was not. In the same manner that Claimants' compensation is subject to being increased by subsequent changes in the rates of pay, their compensation is also subject to being reduced by changes in the number of miles which constitute a basic day.

There is no basis on which to find that Carrier has violated the Agreement.

AWARD: Claims denied.



R. E. Adams, Carrier Member



Bruce Wigent, Organization Member



John F. Hennecke, Chairman and Neutral

Dated: August 6, 1993