Award No. 660
Case No. 660

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)
)
vs.) Parties to Dispute
)
UNION PACIFIC RAILROAD COMPANY)

STATEMENT OF CLAIM:

Claim of Engineer C. F. Penge, Jr. for an additional $28.00 Instructor Pay for each date that Claimant was assigned L. C. Cain, III, as a student engineer, November 2, 6, 7, 8, 10, 12, 14, 15, 17, 18, and December 1, 2, 3, 4, 5, 9, 9, 10, 11, 12, 13, and 15, 1997, File 1101413 and 1101414. Also claims of Engineer P. R. Tagatz for an additional $28.00 Instructor pay for each date that Claimant was assigned D. E. Paulcheck as a student engineer June 30, 1997; July 2, 3, 4, 6, 8, 9, 10, 11, 14, 17, 19, 20, 22, 23, 27, and 29, 1997 and August 2, 3, 5, 6, 9, 10, 11, 12, 13 and 14, 1997, Files 1080709, 1080710, 1080711, 1080712.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the

Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

L. C. Cain III and D. E. Paulcheck were absent for an extended period and during this time lost their certification or license as locomotive engineer under FRA regulations. Upon return to service each was required to work with a certified engineer to regain the status they previously held.

The claims in this case are from the engineers with whom Cain and Paulcheck worked during the recertification process. Claimants C. F. Penge, Jr. and P. R. Tagatz contend they were working as "Instructor Engineers" and were entitled to $28.00 each day under an agreement reading in part:

> "The Carrier may utilize locomotive engineers to provide on-the-job training to student engineers. Such training will be delivered by locomotive engineers designated as 'Instructor Engineers' during their working trips, subject to the following:
>
> xxxxxxxxxxxx
>
> Compensation
>
> 1. Instructor engineers will receive one of the following allowances, in addition to all other earnings,

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for each tour of duty with a student engineer or with an engineer taking a recertification trip required by the FRA to maintain his or her locomotive engineer's license:

Yard Service: $14.00
Road Service: (including local and road switcher): $28.00

Note: The foregoing allowances are 'frozen' (i.e. not subject to future wage increases).

2. The presence of a student engineer will not affect the Instructor Engineer's rate of pay when operating without a fireman.

xxxxxxxxxxxx

Special Qualifications

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Q-1: If the need arises for a student engineer or an engineer recertifying to ride and an instructor is not available may another engineer be used?

A-1: Yes.

Q-2: What will the non-instructor engineer be paid?

A-2: The same as an instructor engineer under the compensation provisions of this agreement.

xxxxxxxxxxxx"

The Employees state that Cain and Paulcheck were working with Student Engineer licenses, issued by Carrier supervision, during the period in question. As such, Claimants were entitled to the instructor allowance for each of the tours of duty until Cain and Paulcheck were again certified as Locomotive Engineers. According to the Employees, the agreement quoted above is clear. A previous settlement, rejected by the Carrier, is offered in support of this contention.

The Carrier states that the Instructor Agreement applies to engineers used to provide on-the-job training to student engineers under the National Training Agreement and FRA regulations. Claimants were not "Instructor Engineers", according to the Carrier.

The Instructor Engineer Agreement does not apply to promoted engineers taking familiarization trips required by FRA mandating continuing recertification or any other

familiarization trips, according to the Carrier. It is the position of the Carrier that it is the intent of the Instructor Agreement that the allowance applies only to those instructing previously untrained persons. Cain and Paulcheck did not fit this description.

It is the decision of this Board that the claims should be allowed. We do not find that one who has been promoted, but lost certification due to a long absence, is not a "student" when returning to service. Cain and Paulcheck were student engineers by definition during the periods in question as they were operating with student licenses. The Instructor Agreement does not specify that the allowance applies only to those operating with previously untrained persons.

This decision is applicable only to the factural situation involved here and is not intended to address any question with regard to an engineer operating with another certified engineer making a review trip or trips.

AWARD

Claims are allowed.

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ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. J. [illegible]
Employee Member

J. G. Albano
Carrier Member

O'Kelly
Chairman and Neutral Member

Dated: 12-14-00