

PUBLIC LAW BOARD 6185

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

— and —

Duluth, Missabe and Iron Range Railway Company

AWARD NO. 1
CASE NO. 1

STATEMENT OF CLAIM:

The engineers listed in this claim [Case E-60-97] should be entitled to the road overtime claimed on the dates shown.

Article IV Section 2 of the 1986 BLE and 1992 Local BLE contracts provide for the payment of Road Overtime after dividing the running miles of the trip by 16.25 to determine the start of overtime.

FINDINGS:

This Public Law Board No. 6185 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

The Carrier and the Organization are parties to the 1986 National Agreement. Article IV

PAY RULES of the 1986 National Agreement states in part:

ARTICLE IV — PAY RULES

Section 1 — Mileage Rates

(a) Mileage rates of pay for miles run in excess of the number of miles comprising a basic day will not be subject to general, cost-of-living, or other forms of wage increases.

(b) Mileage rates of pay, as defined above, applicable to interdivisional, interseniority district, intradivisional and/or intraseniority district service runs now existing or to be established in the future shall not exceed the applicable rates as of June 30, 1986. Such rates shall be exempted from wage increases as provided in Section 1(a) of this Article. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

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		Through Passenger Service	
	Miles in Basic Day	Overtime Divisor	Miles in Basic Day	Overtime Divisor
July 1, 1986	104	13.0	104	20.8
July 1, 1987	106	13.25	106	21.2
June 30, 1988	108	13.5	108	21.6

(b) Mileage rates will be paid only for miles run in excess of the minimum number specified in (a) above.

(c) The number of hours that must lapse before overtime begins on a trip in through freight or through passenger service is calculated by dividing the miles of the trip or the number of miles encompassed in a basic day in that class of service, whichever is greater, by the appropriate overtime divisor. Thus after June 30, 1988, overtime will begin on a trip of 125 miles in through freight service after $125/13.5 = 9.26$ hours or 9 hours and 16 minutes. In through freight service, overtime will not be paid prior to the completion of 8 hours of service.

Section 3 — Conversion to Local Rate

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Section 4 — Engine Exchange (Including Adding and Subtracting of Units) And Other Related Arbitraries

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Section 5 — Duplicate Time Payments

(a) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, shall not apply to employees whose seniority in engine or train service is established on or after November 1, 1985.

(b) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, not eliminated by this Agreement shall not be subject to general, cost-of-living or other forms of wage increases.

The Carrier and the BLE are also parties to a 1992 Mediation Agreement. Article IV of this Agreement adopts language from the 1991 BLE National Agreement (to which the Carrier was not a party) that is identical to Article IV of the 1986 National Agreement, but makes additional

PLB NO. 6185-AWD NO. 1

increases in the miles in a Basic Day. Article IV Section 2(c) continues the same formula for when overtime begins and adapts it to the increased mileage in the basic day. Article IV 2(c) states:

(c) The number of hours that must lapse before overtime begins on a trip in through freight or through passenger service is calculated by dividing the miles of the trip or the number of miles encompassed in a basic day in that class of service whichever is greater, by the appropriate overtime divisor. Thus, effective October 1, 1992, overtime on a trip in through freight service of 125 miles will begin after 8 hours and 28 minutes ($125/14.75 = 8.47$ hours). In through freight service, overtime will not be paid prior to the completion of 8 hours of service. (emphasis added)

Subsequent to the 1986 Agreement the Carrier has based its overtime payments on all miles paid as opposed to the distance of the trip run or operated by the engineer. Some nine years subsequent to the 1986 Agreement, the BLE, in 1995, began filing claims, seeking overtime pay based on the running miles of the trip. The UTU had previously filed similar claims relating to identical contract language in their 1985 National Agreement which claims were denied in Award No. 9 of PLB 5638 (October 28, 1995). The BLE claims were progressed to PLB 5764, and in Award No. 2 of that board the Organization's claims were sustained. The claims presented in the case before the Board encompass 83 individual overtime claims during the period of July to October of 1997.

The parties have presented an extensive record to this Board. We believe that the outcome of this case is determined by the meaning of the terms "...miles of the trip" as used in Article IV, Section 2 (c) as emphasized above.

We find that the terms "miles of the trip" are according their plain and ordinary meaning the miles between the points traveled by an engineer in road service. Thus the "miles of the trip" of an engineer who operates a train from Two Harbors to Minorca and return would be 173.1 miles.

Article IV, Pay Rules, sets forth the components of an engineer's pay which include the basic day, over miles, road overtime and arbitraries and special allowances.

Preparation time and inspection time are payments made by the DM&IR and are expressed in terms of miles and payable at the frozen rate under Article IV, Section 5. When an engineer has to wait for a long period of time at a mine for his or her train the engineer is paid for this time; this

time waiting is converted into miles, and these miles are paid at the frozen rate as arbitraries and special allowances under Article IV, Section 5 — Duplicate Time Payments. The authors of the 1986 Agreement recognized that duplicate time payments would exist for identified employees and they separated these payments out for treatment under Section 5 of Article IV.

The Carrier is asserting the right to interpret Section 2 of Article IV to include in the numerator in addition to the miles of the trip actually operated by the engineer, all other allowances expressed in miles such as preparation and inspection arbitraries, intermediate delay and other arbitraries. The plain meaning of the language "miles of the trip" simply will not support such as interpretation. If the authors of the language of Article IV Section 2 intended to include in addition to the miles of the trip operated by the engineer all of the duplicate time payments expressed in terms of miles, which the authors recognized existed in Section 5 of the Pay Rules, then language in some way similar to "miles paid on any trip by virtue of the various rules of this agreement" would have been used by the authors of the Agreement language. No such "miles paid" language was in fact used, and this Board has no authority to insert such language into the Agreement.

Prior to the 1986 Rule 7 of the parties Agreement covered Overtime for Road Service. It stated:

Rule 7

Overtime in Road Service

Overtime will be paid in all road service when the time on duty exceeds a time arrived at by dividing the miles paid on any trip by virtue of the various rules of this agreement by 12 and one-half (12-1/2). When overtime is paid on this basis, it will be paid on the minute basis at a rate of not less than three-sixteenths (3/16) of the daily rate.

Interpretation:

The miles paid on any trip by virtue of the various rules of this agreement is understood to mean the miles run, and in addition the miles allowed for all allowances such as preparatory and inspection time, delay time, intermediate allowances and arbitraries.

When the parties went to national handling which resulted in the 1986 National Agreement, the Carrier received all of the benefits and the obligations of that Agreement. After the 1986 Agreement the overtime divisor was no longer 12-1/2 as expressed in Rule 7, it was 13.0, and is currently

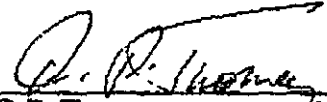
PLB NO. 6185 - AWO NO. 1

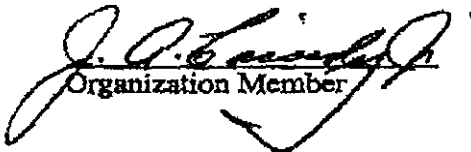
16.25. Road service overtime is no longer governed by Rule 7 or the interpretation of that Rule. No exception or savings clause exists in Article IV of the 1986 Agreement or the 1992 Agreement that preserved Rule 7 and allows the Carrier to pay overtime based on "miles paid".

The Carrier paid engineers on a "miles paid" basis for nine years, which was contrary to the clear language of the Agreement. Such cannot alter the clear language of the Agreement. After full consideration of the entire record we must sustain this claim.

AWARD

Claim sustained.


D.P. Twomey
Chairman and Neutral Member


Organization Member

Carrier Member

ORDER: The Carrier is required to comply with the award within thirty days.

DATED: 2/23/99