PUBLIC LAW BOARD NO. 4450

AWARD NO. 69
NMB CASE NO. 69
UNION CASE NO. P-349-1-631
COMPANY CASE NO. 9304029

PARTIES TO THE DISPUTE:

UNION PACIFIC RR CO
(WESTERN REGION)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Claim of Engineer S. C. Farley for 100 miles, timeslip #150 dated August 26, 1993, account performed work and then call was changed to deadhead.

OPINION OF BOARD: Engineer S. C. Farley (Claimant) was working an interdivisional pool freight job between Salt Lake City, and Milford, Utah. On August 26, 1993 Claimant was called to work the HKYR-24 on duty at 0700. After receiving his paper work and performing an air test on that train, Claimant was instructed by Yard Master Compton at 1020 to trade trains from the HKYR-24 to the CHLAZ-24. Claimant picked up the new paper work and performed an air test on that train, in anticipation of working from Salt Lake City to Milford. After being on duty for some five hours and 45 minutes but not yet departing the terminal, however, Claimantwas told at 1245 that his call was changed to from service to deadhead. Eventually, he did deadhead by Armadillo from Salt Lake City to Milford.

Claimant submitted time slip #150 claiming five (5) hours and fifteen (15) minutes for initial terminal delay and two hundred and seven (207) miles run Salt lake City to Milford.

Carrier's time keeping department paid him a separate and apart deadhead of eight hours (8'00) as well as and three (3) hours and fifteen (15) minutes "initial terminal time". The remainder of the time slip was denied and forms the basis for this claim. It is noted that the Statement of Claim seeks 100 miles for "performing work" prior to Carrier changing the call from service to deadhead. Carrier waived any objection to the changing of the claim because both Parties seek a definitive determination of what compensation, if any, is due to Claimant in these circumstances.

This is another in a series of cases which this Board has decided regarding application of 1986 National Agreement Article VI-Deadheading, Side Letter #4, Questions and Answers, Issue No. 10 of the IDC, the Hopkins/McFather correspondence of April 1990, and related arbitration decisions in various circumstances. See PLB 4450, Awards 19, 20, 32 and 36. None of these decisions presents the identical facts or squarely raises the specific question presented in this matter; although Award No. 36 is close to the mark and the fundamental rationale of those decisions with respect to the deadhead separate and apart applies equally in the present case. Moreover, the wording and logic of Article VI, Section 6 are compatible with a sustaining decision in this case.

Concerning the specific issue presented on this record, the not insubstantial service performed prior to the change of his call to Article VI Section 2 deadhead is payable under Rule 24:

> Rule 24. Basic Day. In all road service, other than passenger, *100 miles or less*, (Straightaway or turnaround) shall *constitute a day's work*; miles in excess of 100 will be paid for at the mileage rates provided according to class of locomotive or other power used. (Emphasis added)

Carrier's defense that Article VIII, Section 3-Incidental Work, Paragraph (f) overides Rule 24 and legitimizes the denial of compensation for the work Claimant performed before his call was changed to deadheading is misplaced in the facts of this case. Nor does this case involve compliance by Carrier with FIFO rules, as did PLB 2179-2 (Arbitrator P. J. Moore). It is not necessary to express or imply any opinion at this time concerning whether that PLB 2179-2 is reconcilable with the Article VI, Section 2 decisions of this Board. We find simply that the claim for 100 miles under Rule 24 must be sustained in the circumstances of the present record. (The Parties jointly stipulated that the initial Terminal Delay would be offset against any monetary award, if the Organization prevails on its revised claim).

AWARD

1) Claim sustained.

2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.

Dana Edward Eischen, Chairman

Dated at Ithaca, New York on April 12, 1996

R. E. Deem

Union Member

Company Member