

PUBLIC LAW BOARD NO. 5335

AWARD NO. 8
Case No. 8

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 Fairlane Road Extra (out of Proctor). Carrier has erroneously deducted eight miles each day for each crewman, from the agreed to guarantee, claiming that the Basic Day has risen from 100 miles to 108 miles since the original 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.

This case involves disputes arising over the compensation of crews operating on the Fairlane Road Extra. This train operates in turnaround service, departing Proctor with 176 empty ore cars, running 48 miles to the Fairlane Taconite Plant, where the cars are loaded, and then returning the loaded cars to Proctor.

Prior to 1965, this run was paid a minimum 100 mile basic day for miles actually run (96), plus various amounts of "delay" at the initial/final terminal, intermediate points and while the train was being loaded. In addition, numerous arbitraries and allowances were negotiated which provided additional pay for such things as operating without a full crew, handling air hoses, preparation time, etc. This complex collection of pay rules resulted in Fairlane Road Extra crews earning anywhere from 150 to 300 miles per run.

In lieu of this complex pay structure, which Carrier believed provided a built-in incentive for employees not to expedite their trains, the parties negotiated a local agreement, effective December 15, 1965, which simplified the method of payment to Fairlane Road Extras and provided a minimum guarantee of 190 miles for these runs. The relevant portion of that Agreement is reproduced below:

- "1. Road Crews in Turnaround Service Between Proctor and Fairlane Plant Yard

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"Assigned and unassigned freight crews, including ore pool crews, may be used in this service between Proctor and Fairlane plant yard. 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:

- (a) The recognized turning point at Fairlane plant yard will be the main line wye switches to the yard. This will be considered the dividing point between mileage and turning point delay time. All crews turning at Fairlane plant yard will be allowed delay time at applicable road rates at turning point, it being understood that road trainmen's Rule 34 will not be applicable to such crews.
- (b) Road crews will be allowed 100 miles at applicable road rates for actual distance traveled.
- (c) Road crews will be allowed 190 miles, or the total pay miles, whichever is greater.
- (d) This does not apply to work train crews or local freight trains."

Under this agreement, Fairlane Road Extras were paid a minimum of 100 miles for all miles actually run (96) and 90 miles at a mileage rate computed by dividing the basic daily rate by 100.

On October 31, 1985, a new UTU National Agreement was signed. Article IV, Section 2 of that agreement provided for changes in the Basic Day Rule, 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

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July 1, 1987	106	13.25
July 1, 1988	108	13.5

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

Thereafter, Carrier began calculating payment for the Fairlane Road Extra, using the increased number of miles which constituted a basic day. On the claim dates here involved (June 1992), Carrier calculated the Claimant crews' pay by allowing a basic day's pay for the first 108 miles of the 190-mile guarantee and paying a basic daily frozen rate mileage rate for the difference between the guaranteed mileage and the number of miles which constituted a basic day at that time ($190 - 108 = 82$ miles).

While the employees did not initially take exception to Carrier's new method of calculating pay for the Fairlane Road Extra, eventually claims were filed and progressed, the instant claims being the first to be submitted to arbitration.

ORGANIZATION'S POSITION:

The Organization takes the position that the Carrier has erroneously deducted eight miles each day from the pay due crews working on the Fairlane Road Extra. The Organization takes the position that Article IV Section 2 (a), which made changes in the miles which make up a basic day, has no application to Fairlane Road Extras. They contend that Article IV, Section 2 (b), which states:

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

means that Section 2 (a) only applies to runs in excess of 100, 102, 104, etc. miles (as the dates of change are reached). Since Fairlane Road Extras run only 96.6 miles, the changes in basic day miles in Section 2 (a) do not apply to them.

Secondly, the Organization argues that change in basic day miles only applies to "through freight" and "through passenger" service. They contend that the Fairlane Road Extra "Guarantee" Agreement does not mention anything about "through freight service" or "through freight rates", thus there is no application of Article IV, Section 2 to these crews.

They further submit that the Disputes Committee decision on Issue 8, upon which the Carrier relies, involved an agreement

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that specifically included the phrase "at through freight rates", upon which the majority of the Committee relied to sustain Carrier's position. The Organization emphasizes that no such phrase exists in the Fairlane agreement, and thus, this dispute is distinguishable from the one in Disputes Committee Issue 8.

The Organization further argues that, when the Fairlane Road Extra "Guarantee" Agreement was negotiated, the parties intended for these crews to receive 100 miles for their turnaround service and an "extra" 90 miles for other allowances previously paid, such as:

- Preparation and Inspection
- Initial Terminal Delay
- Final Terminal Delay
- Special Allowances
- Delays enroute
- Delays while loading at Fairlane
- Weighing Trains at Proctor

When the parties agreed to 100 miles for actual distance traveled (96.6 miles), they did not intend for this 100 mile figure to be changed, or they would have said so in the agreement.

As a result of the Carrier's misapplication of Article IV, Section 2 (a) to the Fairlane Road Extras, these crews have improperly had their pay reduced by eight miles, which the Organization seeks to recover in these claims.

CARRIER'S POSITION:

It is Carrier's position that Fairlane Road Extras are through freight crews and are paid through freight rates. This is evidenced, they say, by Paragraph 1 of the Fairlane Agreement, which states:

" . . . 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"

Carrier states that the "100 miles" in Paragraph 2 (b) of the Fairlane Agreement refers to the basic day provisions of the Agreement which provided, at that time, for payment of a minimum of 100 miles on runs of less-than-100 miles, as the Fairlane Road Extras are. They contend that the inclusion of paragraph 1 (a) was necessary to re-place the basic day feature into the agreement after portions of it had been removed by exempting Fairlane Road Extras from Rule 34 (in Paragraph 1 (a) of the agreement), in order to allow these crews to be eligible to

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receive "intermediate delay", for which they would not have been entitled to receive had Rule 34 applied.

Carrier argues that since the Fairlane Road Extras operate in "through freight" service and are subject to the basic day provisions of the Agreement, Article IV, Section 2 modified the Fairlane Agreement and Carrier has properly applied the agreement and calculated Claimants' pay in accordance with that agreement.

Carrier submits that their method of calculating Claimants' pay is the only reasonable method of doing so. Claimants have been paid their guarantee of 190 miles in accordance with the Fairlane Agreement. The application of the change in the miles constituting a basic day progressively from 100 to 108 miles had the effect of reducing Claimants' pay, but that was the intent of the parties who negotiated the national agreement. Carrier is entitled to realize the benefits accorded it under the national agreement.

Carrier points to the decision of the 1986 National Agreement Informal Disputes Committee (BLE - NCCC) in Issue No. 8 (DM&IR - BLE) in support of its position. The Committee addressed the question:

"Can the carrier adjust daily guarantees in proportion to the increase in the through freight basic day miles?

* * *

"The Organization argues that the DM&IR's reduction of the number of guaranteed miles by the amount of the incremental increase in basic day miles constitutes an improper erosion of the arbitraries and allowances due to engineers on the turnaround services. The 53 additional miles was a substitute for initial and final terminal and delay, meal period allowances, inspection of locomotive time payments, etc. The 153 miles represents an earnings guarantee which the Organization asserts is not subject to the increase in the basic day miles for through freight service.

While this issue begs this Committee to apply equity, the literal language in Article IV as well as the Schedule Rules favors the DM&IR's position. 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). Even though the actual mileage for the two turnaround trips is substantially less than a basic day, the total minimum mileage allowance under Schedule Rule 26 must

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"'take into account the change in the basic day because the 153 miles of guaranteed compensation is calculated ' . . . at through freight rates of pay'"

Carrier also relies upon Award No. 9 of Public Law Board No. 4760 (BLE v. ICG, Referee Robert O. Harris). That award stated:

"The Organization contends that the 125 mile trip computation was made up of 100 miles as compensation for service between Hattiesburg and Mobile and 25 miles was for travel time from Laurel, MS to Hattiesburg. Accordingly, the Organization contends that the 25 mile additional compensation should not be reduced because the mileage for the basic day was increased.

It may well be that the 125 mile figure was arrived at in the manner suggested by the Organization; however, this Board is required to interpret and enforce the agreement as actually written. Nothing in the agreement makes any reference to a travel allowance other than the section which provides for a limit period that engineers will be transported from (sic) Laurel to Hattiesburg at Carrier expense. Referee Stone in First Division Award 17344, in describing the obligation of a referee when interpreting an agreement, noted:

'The very purpose of putting an agreement in writing is to prevent dispute as to its intent. If its plain statement could be denied or limited the value and purpose of written agreements would be destroyed.'

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 overtime payments because of that language."

OPINION OF THE BOARD:

The Board finds first that the Fairlane Road Extra is "through freight" service. Paragraph 1 of the Fairlane Agreement specifically states that:

"Assigned and unassigned freight crews . . . may be used in this service between Proctor and Fairlane Plant Yard. Such crews shall be operated and compensated on a continuous time basis under existing agreement rules, rates

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of pay, and working conditions applicable to road service subject to the following:

* * *

"(d) This does not apply to work train crews or local freight trains." (emphasis added)

The Agreement clearly did not establish a new class of service and specifically excluded "local" freight service. Therefore, it follows that these road crews are operating in through freight service. It is noted that, while the Organization contended that these crews were not operating in through freight service, they did not offer an alternative type of service which they believed the crews to be operating in, if not through freight.

Secondly, the Board finds that Article IV, Section 2 (a) is applicable to Fairlane Road Extras and thus Carrier may properly adjust the miles which constitute a basic day, in accordance with that agreement.

This Board concurs with the reasoning of the Informal Disputes Committee which concluded that the DM&IR could adjust daily guarantees in proportion to the rise in the through freight basic day miles. To do otherwise, would, in effect, increase the daily guarantee for Fairlane Road Extras from 190 miles to 198 miles, which this Board does not have the authority to do.

As shown in Award No. 9 of Public Law Board No. 4760, the effect of the change in basic day miles may now diminish the amount received by Claimants, however, the Agreement specifically provides for a guarantee of 190 miles, of which the basic day is a part thereof. The guarantee is a mileage guarantee, not a monetary guarantee. The amount of compensation flowing from such guarantee is subject to increases resulting from upward adjustments in rates of pay, but is also subject to decreases when the number of miles comprehended in the basic day are increased.

The Fairlane Agreement did not provide for an "extra" or additional payment of 90 miles, separate and apart from the 100 mile basic day, as contended by the Organization, but a total guarantee of 190 miles with the basic day being a component thereof.

Based upon all of the above, the Board finds that Carrier's method of calculating pay for Fairlane Road Extras is not in violation of the Agreement and these claims will be denied.

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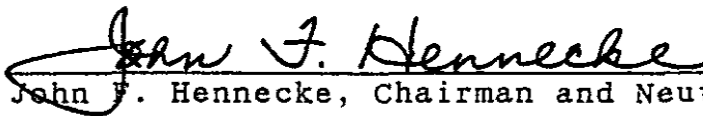
AWARD: Claims denied.



R. E. Adams, Carrier Member



Bruce Wigent, Organization Member



John F. Hennecke, Chairman and Neutral

Dated:



, 1993