PUBLIC LAW BOARD NO. 5410

PARTIES TO THE DISPUTE:

United Transportation Union

-and-

Burlington Northern Santa Fe Railroad

AWARD NO. 74
CASE NO. 74

STATEMENT OF CLAIM:

Claims of Conductor G.F. Watkins, Kansas City, Missouri, claiming one day at freight rate of pay, April 9 and 19, 1999, "account required to begin a new day."

FINDINGS:

This Public Law Board No. 5410 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.

Kansas City is the home terminal for several unassigned freight pools, including two pools working south from Kansas City on former Frisco trackage. One of these former Frisco pools handles trains destined for Springfield, Missouri, in unassigned interdivisional freight service from Kansas City through Fort Scott, Kansas to Springfield. The other former Frisco pool handles trains destined to Tulsa, Oklahoma, in unassigned "short pool" service from Kansas City to Fort Scott, where other pool crews at that point assume operation of those trains for further movement to Tulsa.

The Claims are for April 9, 1999 and April 19, 1999. The Claim for April 9, 1999 is not the correct date. The Carrier set forth facts for the date of April 8, 1999 where the Claimant Conductor G.F. Watkins was called to "Dogcatch more than one train". After working one trip out of the initial terminal and returning the Claimant was required to make a second trip. This second trip commenced after he had been on duty for 8 hours.

Both parties set forth facts as to the claim for April 19, 1999. The Organization states that on April 19, 1999, Conductor Watkins was called from his first-out position in the Fort Scott "short pool" for unassigned freight service, on duty at 1:45 p.m. Both parties agree that he was not called for "short tun around service" and we find that it is likely that he was called to "dogcatch more than one train" or equivalent words.

Conductor Watkins was transported by highway to Hillsdale, Kansas at Mile Post 37, 31 miles outside of switching limits at Kansas City, where he took charge of outlawed northbound train PAMBAM, operating it back into Kansas City. That trip consumed 7 hours 40 minutes. At 9:25 p.m., Conductor Watkins was transported to Mile Post 11, 5 miles outside of Kansas City switching limits, where he took charge of outlawed northbound train BIRKCK, operating that train back into Kansas City as well. That second trip consumed 5 hours 5 minutes. The Claimant was on duty a total of 12 hours 45 minutes. For this service, Claimant submitted a claim for two separate trips, each consisting of a basic day with no overtime. His claim was rejected, and he was paid a basic day's pay, plus 4 hours 45 minutes overtime, with all time and miles of the two trips paid on a continuous time/miles basis. The claims were rejected on the basis that the class of service the Claimant was called for was that of Hours of Service (HOS) Relief, a class of service that is not covered by Article 30(H) the Short Turnaround Rule, and that the Claimant was properly paid for the days. The Organization disagreed and the matter was properly progressed to this Board.

The Organization contends that the Carrier has no authority under any existing agreement to call unassigned freight crews for multiple trips out of a terminal, unless such crews are called for short turnaround service under the provisions of Article 30, Section H. Thus, according to the Organization, the Claimant had to be called on either a single trip basis with no mileage or time restrictions, or on a multiple trip basis in "short turnaround service" subject to the time and mileage restrictions of such service. If the term "dogcatch multiple trips" is synonymous with short turnaround service, then the Claimant's first trip on April 19, 1999 was in excess of the 25-mile restriction for any single trip in such service, and the Claimant is entitled to a basic day's pay for exceeding that restriction. If "dogcatch multiple trips" does not constitute short turnaround service under Article 30, Section H, then the Claimant was improperly required to begin a new day under Article 30, Section I,. when he departed the terminal on the second trip to Mile Post 11.

The Carrier contends that the Short Turnaround Rule does not apply to this case. It contends that the Claimant was performing HOS Relief Service, a distinct type of service, and the proper compensation, under the road service rules, is continuous time, actual miles or a basic minimum day. It contends that Mr. Watkins was properly paid. The Carrier sets forth awards from other properties which the Carrier states supports its position.

The Carrier contends that it is well settled that the Short Turn Rule is a "call rule" not a "pay rule". It contends that the Fort Scott ID Service Agreement and Article 2(c) of the Schedule Agreement are controlling. The Carrier contends that the Organization has not met its burden of proof.

Article 30, Sections H and I of the Schedule Agreement state:

Section H--Freight Service: Short Turnaround; Side or Lapback Trips; Short Trips To Or From A Terminal Or An Intermediate Point

(1)(a) Pool crews may be called to make short turnarounds with the understanding that more than one turnaround trip may be started out of the same terminal and paid actual miles, with the minimum of 100 miles for a day, provided: (1) that the mileage of all the trips does not exceed 100 miles; (2) that the distance run from the terminal to the turning point does not exceed 25 miles; and (3) that the crew shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty 8 consecutive hours, except as a new day subject to the first-in/first-out rule or practice.

Note: The above paragraph has no application to "long turnarounds" for which a pool crew is called on a single-trip basis.

(b) The following turnaround trips are permitted and are exceptions to the provisions of Section I of this Article, and to the other provisions of this Paragraph (1):

Crystal City--St. Louis)
Neodesha--Cherryvale)
Paris--Hugo)
Ft. Scott--Arcadia)
Thomas Yard--Dora)
Ft. Smith--Jenson--Unlimited)
Madill, Ardmore, Durant Runs:

In the question as to pay of pool crews assigned to what is known as the Madill, Ardmore and Durant run:

It is proper to extend the run of this crew to Durant and return, paying for the 2 doubles, one way, Madill to Ardmore and return; and the other Madill to Durant and return, actual miles, or hours, in case the latter was earned.

It is understood that this is not an attempt to begin the practice of running pool freight crews through their established terminals. When a freight train gets to the end of its run, which in the case of a pool freight crew is the established terminal, if called again, it will begin a new trip--with the exception, of course, of turnarounds, which are authorized by agreement.

(2) When either a pool crew or a crew in regularly assigned service is required to make an emergency side or lapback trip between their terminals within the scope of Supplement 25, miles made will be added to the mileage of the regular trip and paid for on a continuous time basis. Such crews to be confined to their assigned territory. Side trips under the meaning of this Article are for the purpose of protecting livestock, perishables and locomotive failures, in addition to emergencies as defined in Article 37.

(3) Short trips from a terminal to an outlying point and return, from an outlying point to a terminal and return, or from an intermediate point to another intermediate point and return, on account of locomotive failure, running for fuel or water, running for wreck car or carmen, or on account of derailment, when such conditions arise in connection with their own train, crews will be paid continuous time or mileage.

(4) Even when no emergency is involved, a pool crew may be notified at any time prior to the time that they leave their initial terminal (i.e., switching limits if it is a yard crew point) to make a side trip, and this will not be considered as being run off their assigned territory. When a pool crew is so notified they will be entitled to the mileage of the side trip regardless of whether or not they actually make the side trip involved.

Section I--Terminal Provision

When a crew has completed its trip to a terminal and is ordered out on another run or run off their assigned territory before completing trip, it will be considered as commencing another day and not continuous mileage.

We have studied the awards cited by both parties, starting with the 1981 UP and UTU arbitration decision, Award No. 10 of PL Board 2703 (Ables); the 1994 BLE and UP decision, Award No. 17 of PL Board 4450 (Eischen) through to the 1999 UTU and BNSF case, Award No. 8 of PL Board 5970 (Klein) and Award No. 213 of PL Board 5124 (Klein) dated 2-7-01 between the UTU and UP. Moreover, we have studied the positions of the parties in the context of the so-called Fort Scott ID Agreement, dated June 24, 1982. We are compelled to sustain this claim.

We find that on the former Frisco property, Article 30, Section H provides the only contractual authority for the utilization of multiple trips for either pool freight or extra crews. This board has no authority to sanction the unilateral creation of a new class of service on this property by the Carrier, called "hours of service relief", which does not exist in the collective bargaining agreement of the parties, has no bargaining history, no pay rules, no call rules and absolutely no practice on the property. The Fort Scott ID Agreement has been in effect since 1982 and the Carrier over the years has utilized the short turnaround service rule of Article 30, Section H(1)(a) subject to the time and mileage restrictions for multiple trips in hours of service relief along with various other uses where the hours of service relief could not be performed within the restrictions of the short turnaround rule or the work would be performed on a single-trip basis and if multiple trips were required they would be subject to the restrictions and payments required by Article 30 Section H and I. A basis does not exist in the record before this board for the unilateral promulgation of a new class of service for hours of service relief which could permit multiple trips devoid of the time/miles and trip restrictions clearly and unambiguously set forth in Article 30 Sections H and I.

Award

Claim Sustained.

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

Chairman and Neutral Member

Organization Member

Carrier Member

Dated: 10/29/01

CARRIER FILE: 55-99-0279
UTU FILE: C - 3908
NMB SUBJECT CODE: 63

BEFORE

PUBLIC LAW BOARD 5410

CASE NO. 74

DR. DAVID TWOMEY
CHAIRMAN AND NEUTRAL MEMBER

UNITED TRANSPORTATION UNION

V.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

CARRIER'S DISSENT

STATEMENT OF CLAIM:

Claims of Conductor G.F. Watkins, Kansas City, Missouri, claiming one day at freight rate of pay, April 9 [sic] and 19, 1999, "account required to begin a new day."

It rarely serves any useful purpose to dissent to an Award. Oftentimes, a dissent is simply a restatement of arguments considered by the Board and an attempt on the part of the "losing" party to reargue the case. BNSF's intent here is not to reargue the case; rather, we wish to point out that the decision reached by the Board in this case places BNSF in the position of being unable to provide hours of service relief to trains in excess of 25-miles from the destination terminal without incurring an arguably valid basic day penalty. In other words, accepting the logic and findings of this Board leads to the undesirable result of violating the contract no matter how the crew is called. Based upon the obvious "Catch-22" that this decision creates, Award No. 74 of this Board cannot be considered to set precedent and must be narrowly applied to only those cases specifically riding on the decision.

The Board rejected the previous arbitration addressing the issue. Moreover, the Board rejected the permissive nature of the "short turnaround rule," the rule upon which UTU relied. In any arbitration proceeding this can happen, and anyone who has been in this business any appreciable amount of time recognizes that arbitration, by its very nature and structure, may yield unanticipated and sometimes mutually unacceptable results. In this case, however, compliance with the reasoning and logic of the Board places BNSF in a position where any hours of service relief performed in excess of 25 miles from the destination terminal will generate a basic day penalty claim.

Furthermore, the Board completely overlooked the fact that hours of service relief was specifically and unambiguously addressed by the interdivisional service agreement. This interdivisional service agreement provides, in part, that relief crews (clearly understood to be hours of service relief crews) would protect such service between Springfield and Fort Scott, as well as between Kansas City and Fort Scott. Hours of service relief crews are to be either "short pool" or "extra board" crews. It is critical to note, as the Board apparently failed to do, that the distance between Kansas City and Fort Scott is over 100 miles, as is the distance between Springfield and Fort Scott. By its literal terms, the ID agreement assigns hours of service relief to pool and extra board crews where the one-way distance is oftentimes well beyond the 25-mile limitation.

This Board decided that the "short turnaround rule" universally applies to hours of service relief under this collective bargaining agreement. The problem with the decision is that, on this property, the "short turnaround rule" can only apply to locations within 25 miles of the terminal, otherwise this rule has no application. In other words, if hours of service relief work is to be performed under the "short turnaround rule," it must be done within 25 miles or this rule is violated, presumably generating a basic day penalty. Application of the "short turnaround rule" in this case is clearly irreconcilable with the fact the ID agreement contemplates hours of service relief being performed by pool and extra crews within a territory exceeding 100 miles – one-way.

A rational application of the short turnaround rule would suggest that the 25-mile restriction simply precluded the Carrier from sending a crew out of the terminal a second time where the 25-mile restriction was exceeded on the first trip. But there is an arbitration decision on BNSF that finds the short turnaround rule is violated at the time any imposed threshold is exceeded. This prior Award decided a case where a crew, operating pursuant to agreement language identical to the instant case, performed two short turnaround trips. While returning with a train during the second trip, the crew exceeded 100 miles actually run. BNSF's position was that, under the "short turnaround rule", the only restriction is that the crew could not be required to depart the terminal on a third trip, except on the basis of a new day. The Board found otherwise. According to this previous Award, the "short turnaround rule" was violated at the time the crew exceeded 100 actual miles run, while performing the inbound leg of the second service trip. While BNSF continues to disagree, that was the Board's decision and interpretation of the short turnaround rule." Therefore, it only stands to reason that this rule would likewise be violated if there were a 25-mile to turning point restriction and the crew went 100 miles before turning. It is for this reason that (1) the parties specifically addressed relief service in the ID Agreement and (2) the majority of arbitration panels deciding this issue recognize that hours of service relief is, indeed, a type of service unto itself. The findings in Award 74 of Public Law Board 5410 are clearly irreconcilable with the ID agreement providing for pool and extra crews to perform hours of service relief where the

turning point is contractually fixed at a location over 100 miles away. Based upon the application of this Award and other relevant agreement provisions, the crews are entitled to a penalty day payment no matter how they are called.

The Award is completely erroneous. It places BNSF in a position where hours of service relief to trains more than 25 miles from the terminal will generate a penalty basic day claim. This Catch-22 is due to the Board attempting to pound a square peg into a round hole by forcing the "short turnaround rule" onto a completely separate class of service. For all of these reasons as well as others presented during the handling of this case on the property, the Carrier respectfully dissents to the decision reached in Award 74 of Public Law Board 5410.

Respectfully submitted,

Gene L. Shire
General Director Labor Relations
The Burlington Northern and Santa Fe Railway Company

ORGANIZATION'S CONCURRING OPINION

In response to Carrier member's written dissent to the Board's decision
in
THE CASE OF AWARD NO. 74
PUBLIC LAW BOARD NO. 5410

The Board's conclusions in this case are faultlessly logical and entirely correct considering the underlying basis for the Board's decision, which are; the literal language of the Agreement, the customs and practices on the property, the history and evolution of applicable rules governing hours of service relief operations, and moreover the complete absence of a rational basis supporting Carrier's position.

Carrier Member's dissent clearly demonstrates either a fundamental misunderstanding of the issues, or perhaps a determination to ignore reality and continue the quest for an unjustifiable interpretation of existing Rules and Agreements, notwithstanding the facts and the evidence. Curiously, the Carrier Member asserts that it is not his intent to "reargue" the case, although he does just that, based on assertions completely foreign to the case and entirely detached from the Award. While it is not our intent to embarrass the Carrier Member and it really has no relevance to the issues before the Board, we must point out for the record that the distance between Kansas City and Fort Scott is less than 100 miles.

Albeit the rationale for his assertions are far from clear, the dissenting officer suggests that this Award makes it impossible for the Carrier to call any hours of service relief crew without generating a penalty claim. That is indeed a strange notion, since hours of service relief crews were routinely called and used without penalty from the days of the steam engine right up to the day in 1999 when BNSF invented a previously non-existent class of service dubbed "dog-catch multiple trips."

If the Carrier member is legitimately unable to comprehend how hours of service crews may be properly called and used without violating the Agreement, any crew caller who worked the former Frisco territory of the merged BNSF system, prior to 1999, is familiar with and can explain the process. It is actually quite simple. Pool and extra crews may not be used on multiple trips out of a terminal unless such trips are made under the short turnaround rule, subject to the time and mileage restrictions contained therein. If, in Carrier's opinion, the existing Rules and Agreements are no longer suitable, the proper means to secure a change is through the give and take of collective bargaining, not by way of an arbitration decision.

What really happened in this case is that the Carrier decided to gamble on a radical and totally untenable position, for no other purpose than to use one crew where two or more are required by Agreement rule. As a result, pool and extra crews were denied work that they had performed for as long as history records. This honorable Board has now adjusted the matter and upheld the rules as written and as applied consistently for at least a century or more.

The Organization fully concurs with the Board's Findings and Award.

Respectfully submitted,

R. L. Marceau
Organization Member