

PUBLIC LAW BOARD NO. 5604

Case No. 6
Award No. 6

Parties To Dispute: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-AND-

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Claim of North Platte Engineer T.M. Maliszewski for an additional basic day, automatic release, when he boarded his train at South Morrill west of Mile Post 162.1 on November 17 and November 25, 1993 and December 30, 1993.

Findings:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The material facts which led to the instant claim are not in dispute. On November 17, 25 and December 30, 1993, the Claimant was operating as an Engineer in Interdivisional (ID) pool service between South Morrill, Nebraska (far terminal) and North Platte, Nebraska. On each date the Claimant was transported by the Carrier westward from the South Morrill terminal to Mile Post 162.5 where he received and took charge of his eastbound train.

The Claimant was instructed to operate his eastbound train from MP 162.5 into and out of the South Morrill terminal. The loaded coal train had been left at MP 162.5 by a Chicago and Northwestern Railroad crew. The Claimant complied with the Carrier's instructions and submitted penalty claims allegedly for performing short turnaround service beyond the established limits of South Morrill, Nebraska. He cited BLE Schedule Rule 71 in support of his claim.

BLE Schedule Rule 71 provides as follows:

RULE 71. AUTOMATIC RELEASE. On arrival at terminals, engineers are automatically released; and when used again a new day will commence, except as provided in Rules 4 and 22.

The Organization asserts that when the Claimant was required to take charge of his eastbound road train west of the South Morrill terminal limits then operate into and out of the terminal he performed short turnaround service prior to his road trip. This Board agrees with the Organization's contention.

We find Rule 71 clear and unambiguous. Under Rule 71, once Engineers arrive at terminals, they are automatically released. Rule 71 expressly provides that when Engineers are used again a new day will commence for which they are entitled to an additional day's pay. The exceptions to Rule 71 set forth in Rule 4 and Rule 22 of the BLE Schedule Agreement were inapplicable to the Claimant on the claim dates subject of this dispute.

This Board agrees with the Organization that the Award of Arbitration Board No. 517 established MP 162.1 as the west terminal limits at South Morrill, Nebraska even though these are not the switching limits at this terminal. Section 3 of the Award of Arbitration Board No. 517, which re-arranged the existing interdivisional (ID) service on the North Platte to South Morrill ID run in 1991, provides, in pertinent part as follows:

3. Miles of Run - Crews working in this Interdivisional Service will be allowed the following miles:

Between North Platte and Northport	-	122 miles
Between North Platte and So. Morrill via Gering	-	166 miles
Between North Platte and So. Morrill via Egbert	-	268 miles

Note 1: Mile Pole 162.1 at South Morrill will function as the arrival and departure point at that location for trains operating from/toward the direction of Egbert. . . .

Since MP 162.1 demarcate the west terminal limits at South Morrill when the Claimant was required to pick up his road train west of these terminal limits then operate back into and out of the South Morrill terminal he was entitled to another basic day in accordance with the clear and unambiguous terms of Rule 71.

This Board recognizes that Public Law Board No. 2627 reached a different conclusion in its Award No. 17. However, the facts in that Award are somewhat different than those now before us. And in any event, we are of the opinion that Public Law Board No. 2627 ignored the plain and mandatory language of BLE Rule 71 (then Rule 76).

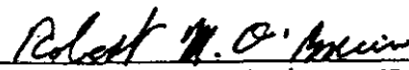
The Carrier argues that the work performed by the Claimant on November 17, 25 and December 30, 1993, was expressly permitted by the 1964, 1971, 1986 and 1991 BLE National Agreements but this Board respectfully disagrees. In this case, the Claimant is not asserting that he performed yard work in addition to his road trip. Nor is his obligation to pick up an over-the-road train from a connecting carrier or to perform incidental work at issue. In our view, none of these BLE National Agreements negated Rule 71 on this property which clearly provides that Engineers are automatically released upon arrival at terminals.

This Board empathizes with the Carrier's dilemma since due to yard congestion and insufficient tracks at South Morrill trains arriving from the Powder River basin must occasionally be yarded just west of MP 162.1. Nevertheless, BLE Schedule Rule 71 is clear and unambiguous and must be applied as it is plainly written. If Rule 71 is to be changed it must be done through negotiations with the Organization.

For all the foregoing reasons, the instant claim must be sustained.

Award: Claim sustained.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


Ron Dean, Employee Member

Lynn A. Lambert, Carrier Member

Dated: