

**PUBLIC LAW BOARD NO. 5969**

Award No. 17

Case No. 30

Carrier File No. CTJ 94-03-11AB

Organization File No. T-5122

**Parties to Dispute:** ( UNITED TRANSPORTATION UNION  
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( BURLINGTON NORTHERN SANTA FE RAILWAY  
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**Statement of Claim:** Conductor G. L. Roberts claims a basic day on timeslip number P-02 dated 10/02/93.

**INTRODUCTION**

This Board is duly constituted by agreement of the parties dated December 20, 1996 (the "PLB Agreement"), and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

### FINDINGS

On October 2, 1993, the claimant, conductor G. I. Roberts, was assigned to the Conductor's Extra Board at Cheyenne, Wyoming. On this particular date, the claimant was called by the Carrier to protect a brakeman vacancy on the second Ft. Collins, Colorado switch assignment. There are four seniority districts: Cheyenne, Trinidad, Denver and Ft. Collins. It was agreed that conductor and brakeman vacancies on assignments at Ft. Collins are protected by the extraboards at Denver, Colorado. However, on October 2, 1993, the Carrier was unable to locate a rested and available brakeman on the extraboard at Denver or an available brakeman on a regular assignment at Denver to protect the vacancy at Ft. Collins. According to the Carrier, the claimant was the first-out and properly rested employee at the nearest extraboard at Cheyenne, and therefore, claimant was correctly called to protect the vacancy at Ft. Collins.

After completing his assignment at Ft. Collins, the claimant was deadheaded to Cheyenne. Upon arriving in Cheyenne, the claimant submitted an "08 penalty timeslip," which claimed a basic day penalty payment for being used by the Carrier off his assigned district. This claim and subsequent appeals by the Organization were denied by the Carrier.

The Organization contends that Article VIII of the 1984 Crew Consist Agreement; Article III, Section 1 of the 1991 Crew Consist Agreement; and Rules 25, 36 and 68 support its argument that the claim should be sustained. The Carrier contends that the rules cited by

the Organization do not support the Organization's claim that the claimant is entitled to a basic day penalty payment. Moreover, the Carrier contends that these rules do not prohibit the Carrier from exercising its prerogative to call the claimant to fill a vacancy at Ft. Collins when the Conductors Extra Board at Denver is exhausted. Furthermore, the Carrier claims that Rule 68 (A) implies an obligation upon the Carrier to call the claimant for the vacancy at issue in this case.

Article III, Section 1 of the 1991 Crew Consist Agreement provides, as follows:

Guaranteed road or combination road/yard extra boards will protect all extra road service needs, both conductor and brakeman. Therefore, employees with conductor seniority dates will be assigned to these boards based upon their brakeman's seniority. The Carrier shall maintain a sufficient number of employees to permit reasonable lay off privileges and to protect the service including vacations and other extended vacancies. The Carrier will regulate the number of positions on the guaranteed extra boards established pursuant to this Article in such a manner to ensure that there is a sufficient number of employees available to protect all vacancies and extra service.

Rule 25, entitled "First In First Out," provides, in relevant part, as follows:

(A) Chain gang crews shall be run first in, first out, in respective service on their respective districts. Extra man to be handled in the same manner, with the exception as to coal runs and runs carrying passengers.

Crews or individual trainmen called to deadhead will be called to go on duty at the same time as the road crew. Rule 10 does not apply.

Rule 36, entitled "Vacancies," provides, in relevant part: "(A) Choice of runs will be governed by seniority, as herein provided." Lastly, Rule 68, entitled "Seniority and Reduction of Force," provides, in relevant part:

(A) Yardmen-Trainmen will establish common seniority rights, on the entire Colorado and Southern Railway System, at the time of entering the service. Where two or more employees enter the service at the same day and hour, they will rank in accordance with the time the application is filed, which time will be recorded on the application.

In reaching its decision, the Board finds the following statement on page 3 of the Carrier's Submission particularly enlightening:

Call rules on the property, indeed, throughout the industry, require that when a source of supply which protects service for a particular area becomes exhausted, a properly rested and qualified employee from the nearest extra board point, on the same seniority district, is called to fill the vacancy and is deadheaded home on tie-up. (Underlining supplied).

The Board finds that the Cheyenne, Wyoming seniority district is separate and distinct from the Ft. Collins seniority district. The conductor/brakeman extra boards at Cheyenne protect service from Cheyenne north to Guernsey, Wyoming and train service south of Cheyenne is protected by the Ft. Collins seniority district. Rule 25 provides that extra board employees will be utilized by the Carrier first in, first out on their respective districts. Based upon the record, the Board concludes that the claimant was used in an improper manner by the Carrier

because he was called to service in the Ft. Collins seniority district, while assigned to an extra board in the Cheyenne seniority district.

Additionally, the Board finds that the Carrier violated Article III, Section 1 of the 1991 Crew Consist Agreement because it did not maintain a sufficient number of employees to permit reasonable lay off privileges and to protect service on the Ft. Collins seniority district at the time this claim arose. The fact that the incident at issue in this case took place on a weekend, when more layoffs allegedly occur, does not excuse the Carrier from complying with Article III, Section 1 and Rule 25(A). Based upon the circumstances presented by this case, the Board concludes that the appropriate remedy to deter future violations of this nature by the Carrier is to sustain the claim. See, PLB 2333, Award No. 2 (Van Wart, Arb.) (1979).

AWARD

The claim is sustained.

*E. T. Koenig*

Edward T. Koenig, Carrier Member

*is rather difficult  
to follow!*

*Robert R. Repstine*

Robert Repstine, Employee Member

*Jonathan I. Klein*

Jonathan I. Klein, Neutral Member

This Award issued the 27<sup>th</sup> day of April, 1999.