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ARBITRATION BOARD NO. 441

In the Matter of Arbitration :
 between :
 THE ATCHISON, TOPEKA AND SANTA FE : Re: Findings and Award
 and :
 BROTHERHOOD OF LOCOMOTIVE ENGINEERS :

Before: Preston J. Moore, Arbitrator

Question To Be Determined

Under what conditions will Carrier establish interdivisional service in unassigned freight and assigned passenger service between Needles, California and Winslow, Arizona?

BACKGROUND

Commencing in July, 1983, the Carrier met with representatives of the Brotherhood of Locomotive Engineers and United Transportation Union to explore operation of interdivisional service between Needles, California and Winslow, Arizona. Ultimately, the Carrier served notice in accordance with Article VIII of the May 13, 1971 and Article XII of the January 27, 1972 National Agreements of its intent to establish this service. The parties followed the procedures set forth in each of the Agreements. Since the LLE

National Agreement of 1971 did not provide for the 60-day test period, the Carrier proffered the opportunity to that Organization in order to provide true operating conditions for run through trains during the test period. The Carrier indicates acceptance by the BLE would also assist in eliminating uncertainties in the minds of the engineers handling the trains "as to how the mechanics of the run through operation would work." The BLE did not accept the offer to participate in the test period; therefore, the Carrier was required to maintain Seligman as an away-from-home terminal for engineers, stopping and changing engineers at that location.

Prior to commencing discussions with the Organizations concerning this interdivisional operation, the Carrier indicated it had spent considerable time creating a computer enhanced operating program. While there were a number of peripheral benefits to the program, the major object was to assist in determining the order in which home and away-from-home crews would be called at the terminals. This Carrier had, in 1972, attempted interdivisional operation between the same points; however, the operation during that test period was a failure, principally, due to calling crews on a first-in, first-out basis. Traffic patterns, unfortunately, are generally not equal East to West or North to South; therefore, calling on a first-in, first-out or fixed ratio proved to be a failure for both the Carrier and the employees.

Following the 60-day test period, all parties resumed their discussions to evaluate the results and determine whether mutual agreements could be reached to establish the run through operation.

Unfortunately, the parties could not reach full accord and negotiations were terminated March 20, 1984, Carrier withdrawing its notice March 23, 1984.

On April 2, 1984, Carrier served notice on only the Brotherhood of Locomotive Engineers of its intention to establish through freight and assigned passenger service Needles, California to Winslow, Arizona. Several meetings were held between those parties; however, again they were unable to reach full accord and application was made for arbitration, Arbitration Board 441 being established pursuant to the request.

This Neutral met with the partisan members of this Board at which time lengthy and well prepared arguments were heard. In addition, detailed submissions were presented by each party, together with pertinent exhibits. Based upon the oral and written presentations by the parties, I make the following determinations.

Findings and Award

I find the parties have followed the procedures of the May 13, 1971 National Agreement, that this dispute is properly before this neutral, and that this neutral has jurisdiction to make this determination.

The Carrier shall have the right to establish interdivisional service for pool freight and passenger service engineers as set forth below:

Terminals - Engineers in interdivisional pool freight and passenger service will operate between the terminals of Needles, California, and Winslow, Arizona. Needles and Winslow will remain home terminals as presently defined. Seligman will remain

a terminal for other than interdivisional service. Pool freight engineers will only protect interdivisional runs and will not be used in turnaround service, except as may otherwise be provided in this award.

All service out of home terminals, other than interdivisional, will be protected by the combined board as set forth herein. The regular assignments will continue to be protected as at present, i.e., by regularly assigned engineers except temporary vacancies will be protected by a junior pool engineer off the inactive home board. Work train and/or work service performed into and out of Seligman during the same tour of duty will be handled by the same engineer that protected the work/wreck train into Seligman, so long as the work/wreck train is tying up at Seligman.

In connection with relieving engineers tied up under the Hours of Service Law, the following will prevail when it is necessary to call a road engineer out of the terminal:

Westbound Trains

- Between Winslow and Seligman - Interdivisional engineer standing first out at Winslow
- Between Seligman and Needles - Junior pool engineer off the inactive home board at Needles

Eastbound Trains

- Between Needles and Seligman - Interdivisional engineer standing first out at Needles
- Between Seligman and Winslow - Junior pool engineer off the inactive home board at Winslow

Basis of Pay - All miles run over one hundred (100) shall be paid for at the mileage rate established by the basic rate of pay for the first one hundred (100) miles or less. Current actual miles run are as follows:

Eastbound - 295 miles

Westbound - 293 miles

Engineers called for interdivisional service will be allowed the mileage terminal to terminal, except when the service is interrupted by an emergency such as flood, washout, derailment, etc., i.e., an Act of God, and the engineer is returned to the originating terminal. In that event, his turn will be placed first out over all others on the inactive board after eight hours rest.

Engineers in this interdivisional service will lay off at home terminal, except in case of emergency, such as illness or injury, and will report at home terminal only.

The parties presented voluminous testimony in connection with the calling sequence of engineers, centering on the needs, unnecessary deadheading and cross deadheading, as well as the elimination of long layovers at away-from-home terminals along with held time. A review of the statistics resulting from the test period conducted September 15, 1983 to November 14, 1983 reveals the need to have a flexible procedure coordinated to the flow and level of traffic. To handle otherwise would be detrimental to both parties. The Organization argues that the Board must address the possibility of "over zealous" application by a Carrier supervisor. It is evident the parties discussed this issue many times before negotiations were terminated.

Therefore, after much deliberation, and recognizing the needs and fears of both parties, the following, from the Carrier's proposed Agreement will govern:

Calling Ratio - The Carrier will determine the ratio of calling home terminal/away-from-home terminal engineers at Needles and Winslow dependent upon the needs of service and the distribution of away-from-home and home terminal engineers, which ratio will not exceed 5:1.

If the Organization is of the opinion that the application of the specified ratio creates an undue hardship and imbalance, the matter will be discussed between the Local Chairman and the General Manager or his representative. Failing to resolve the issue at this level, the matter may be appealed to the Vice President, Personnel and Labor Relations in an effort to reasonably resolve the dispute.

Meals En Route - While the Organization is requesting an allowance of one hour, the Board finds that when engineers are not permitted to stop to eat, they will be paid an allowance of \$1.50 for the trip, unless they qualify for payment under the Meals En Route Agreement of August 1, 1982, which agreement will not be abrogated or modified by this Arbitration Award.

While each party presented viable arguments as to why or why not specific language should be included in the Award concerning the held-away-from-home terminal rule, this Board looked to information provided in the written submissions. It appears from Carrier's Exhibit "H" that the Carrier was willing, during negotiations, to modify the rule to the extent that once NAFH

time began, it would run continuous rather than be limited to eight hours with another sixteen-hour free period. Also, if an engineer was called and released, the held time would not be broken, but there would not be duplicate payments for held time and C&R time. That being the case, the following will apply:

Held-Away-From Home Terminal - Engineers in interdivisional pool freight service held at their away-from-home terminal will be subject to Rule 34 of the current Agreement, which is modified for the purpose of this Award to the extent that continuous time will be paid for all time held after the expiration of sixteen hours from the time relieved from previous duty exclusive of any time resulting from the engineer calling for rest, at the rate paid for last service, until called for service or ordered to deadhead, in which case HAFHT time shall cease at the time pay begins for such service, or when deadheading, at the time the train departs on its road trip. If transportation other than train is used for deadheading, HAFHT time shall cease at the time of departure of the other mode of transportation.

Note: If an engineer is called and released, held time will not be broken. However, there will be no duplicate payment for held time and time on duty.

It was quite evident that the parties had gone to great depths during negotiations prior to this proceeding to provide means for handling the employees that would be both efficient and beneficial to both parties, particularly when coupled to the flexible calling ratio. In some respects the proposed handling is an innovation, but at the same time an effective method of keeping all concerned

advised as to when they may begin to prepare for a call to protect the service. According the Board will adopt the following from the Carrier's proposed Agreement:

Active-Inactive Boards - When an engineer arrives at his home terminal, such engineer will be placed to the bottom of the home terminal board. Engineers from the other home terminal arriving at the same location will be placed to the bottom of the away-from-home terminal board. These boards shall be designated as the "inactive boards."

For the benefit of engineers at their home terminal, the Carrier will, each eight hours, move sufficient home terminal and away-from-home terminal engineers from the inactive boards to the so-called "active board," which board will govern the order in which home and away-from-home engineers will be called during the next eight-hour period based on anticipated service, and such "active board" will only protect interdivisional service.** While the Carrier has the right to determine the ratio for calling engineers, the Carrier will not exceed a ratio of 5:1, away-from-home terminal vs home terminal or vice versa.* If the Carrier determines a need to deadhead surplus away-from-home engineers, such engineers will not be counted in the ratio but will be counted as turns.

*Note: In the absence of an available (rested) away-from-home terminal engineer, home terminal engineers may be called in excess of the ratio of 5:1. In an emergency the ratio will not be applicable.

The active board will be updated each four (4) hours, by deleting engineers that have been called during the prior four

hours, as well as adding engineers to the active board. Home terminal engineers (at their home terminal), when placed on the active board, will not have their order (number of times out) changed.**

Any engineer on the active or inactive board who lays off will have his turn removed from the respective board. The turn will be placed to the bottom of the inactive board when the engineer marks up.

**Note: Order could be affected as result of engineer on active board laying off.

Since the active board only protects interdivisional service, Appendix 21 will only apply to engineers on the inactive board.

An engineer's turn will remain on the inactive board when such engineer is used in accordance with Appendix 21, and such turn will retain that engineer's position until the engineer is rested and marks back to his turn. If the turn becomes first out on the inactive board before the engineer is fully rested and has marked back to the turn, said turn will remain first out on the inactive board.

An item of considerable magnitude and dispute included constructive miles. The Organization argues that present mileage should be continued, citing Arbitration Award 323; whereas, the Carrier points directly to the National Agreement which states: "all miles run." In addition, the Carrier submits prior Arbitration Awards dealing with the issue, including Arbitration Board 388 on this property. Even though the Carrier vigorously argues against payment of constructive miles, it indicated a willingness, in its proposed agreement and in oral presentation,

to phase out these miles through attrition and freezing the present monetary amount, making such payment only to those engineers who have a seniority date in engine service prior to the effective date of this Award. The Board finds the Carrier's proposal to be an equitable solution. Therefore, the provisions of Rule 37 of the Engineers' Schedule will not be applicable to this interdivisional service. In lieu thereof, engineers in this service will be allowed \$22.07 for each trip between Winslow and Needles. This allowance will not be subject to future wage increases and/or cost-of-living allowance and will only be applicable to those engineers with a seniority date in engine service prior to the effective date of this Arbitration Award.

Following the previous test period operation and prior to the Carrier's withdrawal of its Notice on March 23, 1984, the Organization and the Carrier representatives met locally in a joint effort to determine a workable solution for balancing the various pools. The record reflects considerable time and effort was spent reaching what the parties felt was a proper solution, with various Questions and Answers to emphasize areas which might need interpretation. Consequently, this Board is of the opinion that those procedures should be a part of this Award and finds:

Balancing of Pools - As of 12:01 a.m. each Tuesday, BLE Local Chairmen will be provided a status report of trips made by Winslow and Needles engineers during the preceding seven days (from the preceding Tuesday at 12:01 a.m.). The Carrier will then be obligated to attain a trip balance between Winslow and Needles engineers at any point in time between 12:01 a.m. on the twelfth day and 11:59 P.M. on the fourteenth day. If at any point during the 72-hour

period from 12:01 a.m. on the twelfth day and 11:59 p.m. on the fourteenth day, the trips between the pools are balanced, then no adjustment will be made on the part of the Carrier to balance said trips between the pools. A new balance cycle will not start until 12:01 a.m. on the fifteenth day, or 12:01 a.m. on the third Tuesday. If a balance between trips obtained by each pool cannot be reached at any point in time between 12:01 a.m. on the twelfth day and 11:59 p.m. on the fourteenth day of the cycle, the Carrier will be obligated to balance the trips to the pool with the lesser number of trips obtained from the beginning of the balance cycle based on the imbalance as of 11:59 p.m. on the fourteenth day, within four (4) one-way trips.

If the trips balance at any point between 12:01 a.m. on the twelfth day of the balance cycle and 11:59 p.m. on the fourteenth day, but the trips as of 11:59 p.m. on the fourteenth day were not in balance, any imbalance will be carried over and the new cycle would start with this imbalance. If, however, the trips between the pools did not balance at any point between 12:01 a.m. on the twelfth day and 11:59 p.m. on the fourteenth day, the Carrier will be obligated to make an adjustment to the extent that the imbalance exceeds four (4) one-way trips.

When the Carrier desires to change the starting day of the balancing cycle, it will provide a minimum of 15 days' advance written notice to the Local Chairmen, who will have the opportunity within this notice period to discuss the matter with the Superintendent, or his representative, if they so desire. The

Carrier will not serve a notice to change the starting day of the balancing cycle more often than once every 90 days.

Question and Answer No. 1(a).

Q. If the balance between pools were to be "0" at 11:00 p.m. on the eleventh day of balancing cycle and did not "0" at any point between 12:01 a.m. on the twelfth day and 11:59 p.m. on the fourteenth day, while ending up eight one-way trips out of balance at 11:59 p.m. on the fourteenth day, what is the obligation of the Carrier?

A. The Carrier would be obligated to balance the trips in favor of the pool with the lesser number of trips in the amount of four one-way trips (eight one-way trips out of balance - four one-way trips limit = four one-way trips). The new balance cycle will start with four one-way trips in favor of the pool with the greater number of trips.

Question and Answer No. 1(b).

Q. When Carrier is obligated to make the trip balance in Question 1(a) above, how shall it be accomplished?

A. The Carrier will call from the pool with the lesser number of one-way trips the required number of engineers from the home terminal or the away-from-home terminal, or a combination thereof, to deadhead by 11:59 p.m. of the fourteenth day.

Question and Answer No. 1(c).

Q. What is the penalty if the Carrier fails to deadhead the number of engineers required in Question 1(a)?

A. The required number of engineers that should have been called to deadhead by 11:59 p.m. of the fourteenth day (Question and Answer

1(b), will, when going on duty after 11:59 p.m. of the fourteenth day be allowed a one-way trip in addition to all other earnings on that trip.

Question and Answer No. 2.

Q. If the balance of trips between the pools were to be 10 out of balance on the seventh day of the balancing cycle, yet a "0" balance was reached at 9:00 p.m. on the twelfth day, while ending up eight trips out of balance at 11:59 p.m. on the fourteenth day, what is the obligation of the Carrier?

A. The Carrier would not be obligated to make any adjustments since a "0" balance was reached between 12:01 a.m. on the twelfth day and 11:59 p.m. on the fourteenth day.

Question and Answer No. 3.

Q. If at 11:59 p.m. on the fourteenth day, the balance was off by seven one-way trips between the pools, yet three crews were en route, what is the obligation of the Carrier?

A. The Carrier would not be obligated to make any adjustments, since the three engineers en route as of 11:59 p.m. on the fourteenth day will be counted as having completed their trip for purposes of trip balance, i.e., within four (4) one-way trips.

Question and Answer No. 4.

Q. Will engineers who are on duty but have not departed as of 11:59 p.m. on the fourteenth day be counted in the trip balance?

A. Engineers who are on duty but have not departed at 11:59 p.m. on the fourteenth day will be counted in the trip tabulation between pools the same as those in Question 3.

Question and Answer No. 5.

Q. How will engineers overtaken by the Hours of Service Law be treated with respect to the trip balance?

A. An engineer in interdivisional service overtaken by the Hours of Service Law will be credited with the entire one-way trip. Likewise, any interdivisional engineer utilized to dog catch the engineer en route will be credited with an entire one-way trip for the trip balancing purpose. Other than this, there will be no count to the trip balance.

Question and Answer No. 6

Q. What if an involuntary closure of both mainlines between Barstow and Belen occurs between 12:01 a.m. of the eighth day and 11:59 p.m. of the fourteenth day of the balancing cycle?

A. If such a closure of both mainlines occurs, the Carrier will attempt to balance the trips at some point between 12:01 a.m. on the twelfth day and 11:59 p.m. on the fourteenth day. However, if conditions were such that a trip balance of "0" cannot be obtained between 12:01 a.m. on the twelfth day and 11:59 p.m. on the fourteenth day as a result of this service interruption, the Carrier will not be responsible for balancing trips between the pools for that particular cycle; however, the imbalance will be carried over to the next balancing cycle.

Question and Answer No. 7.

Q. If a trip balance of "0" is obtained on the twelfth or thirteenth day of the cycle, when does a new cycle begin?

A. Regardless of when a "0" balance is reached between 12:01 a.m. on the twelfth day and 11:59 p.m. on the fourteenth day, a new

balance cycle begins at 12:01 a.m. on the fifteenth day, or every third Tuesday at 12:01 a.m.

Question and Answer No. 8;

Q. Will any trips incurred as a result of work/wreck trains be utilized for trip balancing purposes?

A. No, only trips incurred in interdivisional freight service will be included in trip balance.

In the area of trading trains both parties adequately presented their positions. The BLE indicated there should be a penalty for trading trains en route, and such penalty should be in addition to their current schedule rule covering exchanging of engines. On the other hand the Carrier points out there is no basis for paying a penalty for trading trains as this has been a common practice to prevent crews from not being run in turn as per current agreement rules. The Carrier further states that if some rationale should dictate an allowance for trading these interdivisional trains en route, it should be a set frozen amount, not subject to future wage and/or COLA increases. Finally the Carrier argues there is no reason for applying the exchange of engine rule, as the history of that rule shows it was never intended to cover trading of trains, and when trains are presently traded, so as to run them in turn, the engineers have not claimed or been paid for exchanging engines. Basically the Carrier contends that trading of trains is not exchanging engines, and finally two payments are not proper for a single action.

Considering all of these facts the Board finds that this issue has been resolved by Award 486 of SEA 379 which held that the proper

payment is one hour as specified by Article 33.

The BLE presented arguments for establishing some criteria to pay overtime. The Carrier counters with the argument that the National Agreement makes no provision for modifying schedule rules as a condition to operating interdivisional service. The BLE is basically trying to prevent engineers caught by the Hours of Service Law from waiting excessive periods of time before vehicular transportation is provided to carry them to the distant terminal. They are of the opinion that if, for example, overtime started at the twelve-hour mark, the Carrier would be more prompt in picking up the engineers. The Carrier points out that the request is actually a compounding of the miles paid, because the engineer would be paid the miles of the run terminal to terminal, plus the so-called overtime miles, not miles run to the point when caught by the Hours of Service, plus the overtime miles. Furthermore the Carrier argues that such an arrangement is an incentive for the Hours of Service Law employee, after being picked up by the vehicle, to request to eat en route, take out of ordinary route, or drive at minimum speed, all to stretch the time. The Carrier did offer to alleviate the BLE fears by allowing straight time until picked up by the vehicle, less a reasonable free time which would represent the necessary time to call relief plus some travel time.

Considering all these facts, the Board finds that from the time an engineer is caught by the Hours of Service Law, the Carrier will be entitled to one hour free time, following which the engineer will be paid pro rata time until the engineer is picked up by vehicular transportation, at which time the payment will cease.



The Organization is seeking a revision to the schedule provisions covering formal investigations. Basically the Organization requests that all hearings be conducted on the engineers' original seniority district. The Carrier objects to this concept because the practice is to hold the hearings at the point selected by supervision in charge of the location where the episode occurred. There were requests and proffers by both parties in an effort to resolve the issue; however, again reverting to the written documents, this Board finds applicable schedule rules will apply to engineers required by the Carrier to attend formal investigations. However, an engineer in interdivisional service who is required by the Carrier to appear for a formal investigation at a location not on his original seniority district will be compensated for the deadhead miles over the other seniority district when dismissed or suspended.

While the BLE is seeking payment for property at Seligman, the away-from-home terminal (which the Board understands mainly consists of trailers), the National Agreement does not provide for such relief at an away-from-home terminal, and the Carrier is not under any obligation as the result of the run through operation. The BLE argues that in a prior incident, involving a similar situation, the Carrier agreed to a set amount and a similar arrangement should prevail in this case. What a Carrier may voluntarily offer, in negotiating an agreement when no payment is required, is up to the Carrier.

As pertains to some sundry items and issues raised by both parties, it was agreed during the proceedings:

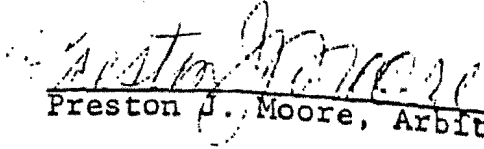
Working With a Reduced Train Crew -- This agreement does not modify any provisions of the Agreement dated June 18, 1982 concerning

engineers working with reduced train or yard crews.

Protective Conditions. -- Section 5 of Article VIII of the May 13, 1971 National Agreement is made a part of this Award.

Vacations -- An engineer in interdivisional service will be permitted to advance the starting date of a scheduled vacation period to coincide with the start of layover days.

Qualification -- Local Supervision will make necessary arrangements for qualification of engineers on the territory over which they formerly did not operate.


Preston J. Moore, Arbitrator

September 20, 1984