

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24510
Docket No. 44259
95-1-94-1-U-1763

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of Engineer H. R. Thompson for 118 miles account was denied permission to eat while working in road freight service on April 19, 1992.

BLE Case: 1702
Carrier File: 9202392

Claim of Engineer T. J. Marshall for a basic day account not allowed to eat prior to performing service at his final terminal on August 22, 1992.

BLE Case: 1765
Carrier File: 9203848

Claims of various listed Engineers on various specified dates for a basic day account not allowed to eat enroute.

BLE Case: 1868
Carrier File: 9302815
9302818
9302819"

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Carrier has argued that these claims are improperly before the Board. Its position is that the claims were handled individually on the property, and as such cannot be combined at the Board. There is no rule of the Board that prohibits the combining of claims. However, this does not mean the Organization can shotgun a bunch of miscellaneous claims into one case. The fact that these claims deal with one rule makes them suitable for combining, albeit the facts are not identical.

The controlling provision of the Schedule Agreement is Article 36, which reads as follows:

1. Engineers in through and irregular freight service will be allowed time for a meal between terminals after being on duty five (5) hours or more when it is apparent the trip cannot be completed within eight (8) hours, provided they notify the dispatcher sufficiently in advance to avoid delay to other trains.
2. In application of this Agreement, engineers will exercise prudence and good judgment in order to expedite the movement of trains, and Carrier officers and supervisors will honor requests to eat under the provisions of this Agreement.
3. Notwithstanding, and in addition to other provisions of this Agreement, where eating places are available, engineers will be allowed to eat on line of road when their train is being delayed to the extent that eating will not cause further delay to their train or work. This will also apply after arrival at the final terminal.
4. Engineers arriving at their final terminals without having stopped to eat within the last six hours and are then instructed to perform switching other than putting their train away (including the engine) will be allowed to eat, without deduction in pay, prior to performing such switching.
5. In local, traveling switcher, dodger, work and wrecker service, engineers will be allowed to stop work and eat during each tour of duty that cannot be completed in six (6) hours or less from time on duty, unless they waive the opportunity to do so. (This Section 5 does not change present rules or practices with respect to furnishing engineers on relief trains meals on commissary cars.)

6. There will be no requirement to allow engineers to stop and eat more than once during a single tour of duty. All employees eating on line-of-road or at the final terminal under Section 2 hereof, must do so with the least delay reasonably possible.

7. When engineers are tied up on line-of-road because of Hours of Service Law, or any other reason, and are then transported by automobile or similar vehicle operated by an officer or employee of the Carrier, the engineers will be allowed to eat at the first reasonably convenient place on the way to the terminal, provided that the engineers have not stopped to eat within the last six (6) hours. This will also apply when engineers are transported by taxi cab.

8. The foregoing does not confer on any engineer the unilateral right to stop to eat without first notifying the dispatcher.

9. After engineers have been on duty ten (10) hours, they will not delay their trains to eat when to do so will result in their tying up under the Hours of Service Law or cause substantial delay to other trains."

Claim A. On April 19, 1992, Claimant arrived at the final terminal of his run. The crew was instructed to make a set out of a part of the train then make a pick up. After the pick up, the crew coupled back to the cars that had been set and went off duty. The Claimant filed for a penalty day account not being allowed to eat prior to performing switching at the final terminal, an alleged violation of Section 4.

The Carrier argues that the moves made are permissible without additional compensation. No claim was filed for the moves made by the crew.

Based on the facts in this claim, we find that the Organization has failed to meet the burden of the proof that Section 4 was violated. The claim will be denied.

Claim B. On August 27, 1992, upon arrival at the final terminal the Claimant was required to make a straight pick up prior to yarding his train. A claim was filed for a penalty day account on alleged violation of Section 4 Article 36. Again, as in Claim A, the Organization has failed to meet its burden of proof and the claim will be denied.

Claim C. This claim involves three instances of engineers assigned to local freight service not being allowed a meal period. The Organization's position is that Section 5 of the Agreement states that engineers in local service will be allowed to stop and eat.

The Carrier argues in this case that the crew would have delayed the trains unnecessarily. It also argues in this claim as in all others, that the penalty requested is severe. It should be noted in these instances that the Claimants were on duty approximately 8 hours. We will sustain the claims. However, the Board agrees with the Carrier that the violation does not warrant the payment of an additional day's pay. Accordingly, we will award the Claimants 1 hour at the pro rata rate of pay. The Carrier should be mindful that if in the future the violations are found to be flagrant, the penalty may be more severe.

AWARD

1. Claim A denied.
2. Claim B denied.
3. Claim C sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimants be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 3rd day of October 1995.