

PUBLIC LAW BOARD NO. 2995

PARTIES ) UNITED TRANSPORTATION UNION  
TO )  
DISPUTE ) NORFOLK & WESTERN RAILWAY COMPANY - LAKE REGION

STATEMENT OF CLAIM:

Claim of "F" District Fireman J. Montgomery dated October 17, 1983, for 100 miles account of being held at Lima, Ohio, his away-from-home-terminal, over 16 hours and then worked back to Bellevue in violation of Fireman's Rule 33 paragraph (e).

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On October 16, 1983, there was a shortage of pool crews in the Bellevue-Lima Pool which made it necessary Carrier use an extra, or what is termed "swell" fireman out of Bellevue for a Lima train. In this respect, Carrier called the regular assigned pool crew for an extra or unscheduled train (11EBU) out of Bellevue at 3:55 P.M., and called Claimant for Train BF01, which Carrier states is normally the only train between Bellevue and Lima at this time. Claimant was called for 6:00 P.M., although Carrier says the normal call time ranges between 9:00 P.M. to 10:00 P.M.

Insofar as Claimant is concerned, he arrived at Lima at 9:33 P.M. and went off duty at such away from home terminal at 10:00 P.M. The regular assigned pool crew had preceded Claimant into Lima and was, of course, then to be considered first out for assignments under the applicable agreement rules.

In operating back to their home terminal, the regular assigned pool crew was called for an extra or what Carrier says was an unscheduled train (21SUA), which was called for 1:30 A.M. Claimant was called for Train FB02, which Carrier states is normally called within 16 hours of the regular assigned pool crew's arrival at Lima. However, on the date in question (October 17, 1983), Train FB02, which originates in Frankfort, Indiana, was called at Frankfort for 3:10 P.M. and arrived in Lima at 10:17 P.M., with the crew off duty at 11:00 P.M. The Carrier states the time the train was called at Frankfort was outside the normal calling time range, which it says normally runs from 11:30 A.M. to 4:00 P.M. Claimant was called for Train FB02 for 10:35 P.M., and worked the train back to his home terminal at Bellevue.

It is the position of the Organization that Carrier was in violation of Rule 33(e) for Carrier to have held Claimant over in Lima for a total of 24 hours and 30 minutes and calling him to work a train back to his home terminal.

Rule 33(e) reads as follows:

"(e) When it becomes necessary to swell the pool, the swell fireman will be deadheaded back to his home terminal unless there is reasonable probability of a place where he can be worked back to his home terminal, in compliance with the first-in first-out rule, within 16 hours after his arrival at the away-from-home terminal."

The Organization states the above quoted rule has been in effect for many years on this property and did not present a problem until recently. In this connection, it submits past settlements of disputes on the property support the holding that a "swell fireman" be dead-headed back to his home terminal if not worked back from the away from home terminal within 16 hours of arrival at such point.

The Carrier disputes the Organization contention that a swell fireman cannot be called to work after 16 hours, as in the instant case, but can only be called to deadhead. It asserts the Organization would "ignore that part of the rule reading '...unless there is reasonable probability of a place he can be worked...within 16 hours.' The Carrier also urges that the disposition given the claims cited by the Organization were of a compromise nature and are not of precedential value.

The Carrier further maintains that the instant dispute happened due to a series of events occurring that could not be predicted with minute precision accuracy. It cites these events to be as follows:

- "1. Due to decline in business only one (1) Bellevue crew in the pool.
2. An extra train (21SUA) called out of Bellevue.
3. BF01 called earlier than normal and a short time on duty (4 hours).
4. An extra train out of Lima that the regular crew handled.
5. FB02 called later out of Frankfort than normal."

The Carrier also states that the call time of FB02 is difficult to project; traffic arrives in Frankfort for FB02 from "possibly four

(4) different districts." Furthermore, the Carrier says, it "does not have a crystal ball and there was reasonable probability that the claimant would work back in 16 hours [and when] the decision was made to work the 'swelled' crew back to Bellevue, it was anticipated that they would be called within 16 hours."

This Board can appreciate the fact that Carrier does not have a crystal ball with which to determine the parameters of its operations. However, we do not find that such a ball was needed for Carrier to have determined that it would not be able to show reasonable probability of a place where it could work Claimant back to his home terminal within the 16 hours set forth in Rule 33(e) when it decided to dispatch or call Claimant for Train BF01 out of Bellevue for 6:00 P.M. In this respect, it is to be noted that with Claimant going off duty at Lima at 10:00 P.M., this meant that if he was to be used on FB02 that this train would have had to have been planned for departure out of Frankfort prior to the start of the 4½ hour range that Carrier alleges is normal for such train to be called at Frankfort, or at 6:30 A.M., instead of as here, at 3:10 P.M., so as to be in Lima within the 16-hour limitation set forth in Rule 33(e). Conversely, it would appear that had Carrier not called Claimant for an early start at 6:00 P.M. out of Bellevue, but had called him for the higher call time which it states to be normal for calling at Bellevue, i.e. 10:00 P.M., this would then have put Claimant off duty at Lima at 2:00 A.M. Then, had Train FB02 been called at Frankfort at the low end of the normal range (11:30 A.M.) this would have had that train into Lima at 6:37 P.M., or within the provisions of the 16-hour reasonable probability requirements of Rule 33(e).


It being evident to this Board that Carrier has not met the burden of proof in showing that there was reasonable probability for it to have believed there would be a place where Claimant could be worked back to his home terminal within 16 hours after his arrival at Lima, or his away from home terminal, the claim for 100 miles account not being deadheaded back to his home terminal will be sustained.


AWARD:

Claim sustained.

ORDER:

The Carrier is directed to make the Findings of this Award effective within 30 calendar days of the date set forth below.

  
Robert E. Peterson, Chairman  
and Neutral Member

  
Stephan R. Budzina, Carrier Member

  
Neal E. Moore, Employee Member