INFORMAL DISPUTES COMMITTEE

In the Matter of: Pursuant to Article XVI of the May 19, 1986 Arbitrated NationalAgreement

BROTHERHOOD OF LOCOMOTIVE ENGINEERS Organization,

And

THE NATIONAL CARRIERS CONFERENCE COMMITTEE

MEMBERS OF THE COMMITTEE

Organization's Member: Larry D. McFather
Carriers' Member: Charles I. Hopkins, Jr.
Neutral Member: John B. LaRocco

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INTRODUCTION

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The parties established an Informal Disputes Committee pursuant to Article XVI of the May 19, 1986 Award of Arbitration Board No. 458. This Committee was duly constituted in accord with Article XVI as well as the Carriers' correspondence of December 9, 1986 and the Organization's January 22, 1987 response. The Committee resolved many questions arising under the May 19, 1986 Arbitrated National Agreement but some issues have been referred to arbitration pursuant to the second paragraph of Article XVI which reads:

> If the Committee is unable to resolve a dispute, it may consider submitting the dispute to arbitration on a national basis for the purpose of ensuring a uniform application of the provisions of this Agreement.

The Informal Disputes Committee convened in Washington, D.C. on January 29, 1987 and March 18, 1987 to consider seven issues regarding the interpretation and application of the 1986 Arbitrated National Agreement. The Committee notes that although the 1986 National Agreement was consummated through binding interest arbitration, most if not virtually all, the provisions were originally drafted by the Carrier and Organization negotiators. Thus, the parties' intent and the negotiating history are critical to properly interpreting the terms of the Agreement.

ISSUE NO. 1

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Should an allowance paid for an engineer protecting any assignment which has a guarantee be included in the straight time hours worked if such individual was rested and available for service?

Pertinent Agreement Provision

ARTICLE III - LUMP SUM PAYMENT, Paragraphs 1 and 2.

> "A lump sum payment, calculated as described below, will be paid to each employee subject to this Agreement who established an employment relationship prior to the date of this Agreement and has retained that relationship or has retired or died. Employees with 2,150 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations and holidays) during the period July 1, 1984 through July 31, 1985 will be paid $565.00. Those employees with fewer straight time hours paid for will be paid an amount derived by multiplying $565.00 by the number of straight time hours (including vacations and holidays, as described above) paid for during that period divided by 2,150.

Discussion

There are many types of constructive allowances but a typical example is where an engineer protects an assignment which operates only five days a week but carries a seven day a week guarantee. The question at

issue concerns whether or not the guaranteed payments for days when the engineer did not actually perform service should be included in computing straight time hours to determine if the engineer satisfies the eligibility requirements for a full lump sum payment. The parenthetical phrase in paragraph two of Article III defines "straight time hours paid for. The language is identical to the instruction for completing Column 5 of Form B of the Interstate Commerce Commission's Rules Governing the Classification of Railroad Employees and Reports of Their Service and Compensation" dated January 1, 1951. The reference to Interstate Commerce Commission reports in the parenthetical expression confirms that the drafters of Article III intended to exclude from the straight time hours calculation compensation reported to the ICC as constructive allowances. The Column 7 description on ICC Wage Statistic Form B specifically mentions deadheading, safety meetings and vacations as examples of constructive hours. In Article III, paragraph two, the parties expressly excepted vacation and holiday pay from the definition of a constructive allowance. If the parties had intended to similarly count guaranteed payments towards total straight time hours (for the purpose of ascertaining the amount of the lump sum payment), the parties could easily have added such an exception. The specific listing of two exceptions is a strong manifestation that the parties did not intend to create any additional exceptions. A guarantee associated with an assignment or extra list is more analogous to an employee protective payment or payment for being called but not used rather than compensation for actual service. Based on the clear contract language in Article III, Paragraph 2, the answer to the Issue is "No. However, the Organization is concerned that the Carriers might engage in creative reporting methods to increase the number of hours classified as constructive allowances and to simultaneously decrease straight time hours used to calculate the amount of the lump sum payment. This matter should be addressed on a case by case basis. Suffice it to state that in the record before us, we do not find any evidence that the Carriers are deviating from their past ICC reporting practices.

Answer to Issue No. 1: No.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 2

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Are mileage limitations/regulations adjusted proportionately to the mileage increase in the basic day?

Pertinent Agreement Provision

ARTICLE IV - SECTION 2(a) - MILES IN BASIC DAY

(a) The miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed as provided below:

	Through Freight Service		Through Passenger Service	
Effective Date of Change	**Miles in Basic Day**	**Overtime Divisor**	**Miles in Basic Day**	**Divisor Overtime**
July 1, 1986	104	13.0	104	20.8

July 1, 1987	106	13.25	106	21.2
June 30, 1988	108	13.5	108	21.6

Discussion

As in Issue No. 1, the clear contract language controls the outcome of this question even though to some extent, the result is contrary to the parties' overall intention to avoid reducing the direct earnings of any presently employed engineer.

Section 2(a) of Article IV provides for incremental increases in basic day miles through June 30, 1988. There is no language in Section 2 or the remainder of Article IV which provides that the changes in the basic miles for through freight and through passenger service would automatically and proportionately raise the mileage limitation/regulations in effect under the scheduled agreements on the various railroads.

While we do not need to resort to extrinsic evidence to answer this issue, the bargaining history supports the plain meaning of the contract language. During negotiations, the Carriers proposed that mileage limits be discontinued. At the bargaining table and before Arbitration Board No. 458, the Organization opposed any deviation from the mileage limits. The Organization pointed out that the limitations vary greatly from railroad to railroad. Moreover, on some railroads it is possible for an engineer to exceed the maximum mileage because the pool service is regulated according to mean miles (between minimum and maximum).

When the parties were considering an increase in basic day mileage for through freight and through passenger service, they could have foreseen the impact such a national rule might have on local rules and regulations. Even though the overall intent of the 1986 Arbitrated National Agreement was to preserve the earnings of a presently employed engineer, the Committee must prudently refrain from tampering with provisions in the schedule agreements. Before Arbitration Board No. 458, the Organization emphasized that the limitations are best addressed on each individual property.

Aside from its adjudicatory function, the parties envisioned that the Informal Disputes Committee would "...provide counsel, guidelines and other assistance in making necessary operational and or agreement rule changes to provide the type service necessary... to accomplish the goals announced in Side Letter #23. In our advisory status, we urge the parties to formulate a rule on indexing mileage guarantees which, when fairly applied, recognizes that the basic day mileage is gradually increasing. The purpose of the mileage limits is to insure that the Carriers have adequate, available manpower, to regulate the flow between the engineer and fireman classes and to more evenly distribute earnings so that a small group of senior engineers would not gain excess compensation at the expense of other craft members. Agreeing to a fair and equitable adjustment factor would, in the long run, result in more efficient railroad operations. The parties have several alternative methods for structuring an indexing system so that mileage regulations correspond to the basic day miles. Also, the ratio does not necessarily have to be on a one to one basis. The number of possible formulas is further support for the Committee's decision not to read an implied proportional adjustment into Article IV, Section 2.

While we are answering the question at issue in the negative, we need to comment on a specific dispute which has arisen on the Burlington Northern Railroad (BN). For engineers assigned to guaranteed extra boards, the guarantee equals the money equivalent of 3,250 miles at the minimum through freight rate of pay. (See Article 22, Section C(2)(a) of the former Frisco Schedule Agreement.)

The BN asserts that Article IV, Section 2(a) of the Arbitrated National Agreement lowered the value of one mile. After July 1, 1986, the BN calculates the 3,250 guarantee based on each mile being worth l/104th of a basic day (currently 108.06). According to the BN, the money equivalent of 3,250 miles is $3,376.75. The Organization computes the value of one mile as 1/100th of the daily rate or $3,513.25 per month. The record also contains an irreconcilable factual discrepancy over exactly how the BN has been applying Article 22, Section C(2)(b) of the Schedule Agreement. According to the Organization, the BN changed the proration of the monthly guarantees to further reduce engineers' pay. On the other hand, the BN conceded that it initially changed its guarantee claim forms to reflect a different proration system but the BN has reinstituted the proration monthly guarantees in effect before the award of Arbitration Board No. 458.

With regard to the BN dispute as well as disagreements which might arise on any of the signatory railroads, the Committee finds that Article IV, Section 2(a) changed only the basic mileage in through freight and through passenger service. Since Article IV, Section 2(a) did not impliedly raise mileage limitations, the provision cannot be similarly construed as an implied modification of other rules in existing schedule agreements. Therefore, if any railroad believes that wages paid on a guaranteed assignment or extra board should be adjusted to reflect the increase in the basic miles, the particular railroad's justification for the adjustment must be derived from the language (tying the guarantee directly to basic day miles) in its schedule agreement as opposed to any implication flowing from Article IV, Section 2(a) of the 1986 National Agreement.

Answer to Issue No. 2: No.

DATED: March 31, 1987

Larry D. McFather
Organization Member

Charles I. Hopkins, Jr.
Carrier Member

John B. LaRocco
Neutral Member

ISSUE NO. 3

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Can established Interdivisional Service be extended or rearranged under this Article?

Pertinent Agreement Provisions

ARTICLE IX - SECTIONS 1, 3 AND 5 - INTERDIVISIONAL SERVICE

Section 1 - Notice An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

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Section 3 - Procedure

> "Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will be applicable to runs which operate through home terminals.
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> ****
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> Section 5 - Existing Interdivisional Service Interdivisional service in effect on the date of his Agreement is not affected by this Article.

Discussion

The threshold question is whether Carriers may extend or rearrange interdivisional service established prior to the effective date of Article IX of the 1986 Arbitrated National Agreement. It should be noted that the Article IX, Section 2 conditions attached to interdivisional service are more favorable to the Carriers than the terms and conditions in Article VIII of the May 13, 1971 National Agreement. The second but related issue is whether the

conditions under which the interdivisional service was previously established are carried forward with the extended or rearranged interdivisional service made pursuant to notice under Section 1 of Article IX.

The record contains, as an example, a dispute which has arisen on the Southern Pacific Transportation Company. Although the Southern Pacific dispute is pending before Arbitration Board No. 468, the proceeding has apparently been held in abeyance until this Committee can provide the parties with some necessary guidance. Under the auspices of Article VIII of the 1971 Agreement, the Southern Pacific established interdivisional service between San Antonio and Ennis through the away from terminal Hearne on March 26, 1986. Ennis and San Antonio are home terminals. This elongated interdivisional service had been superimposed on preexisting interdivisional service between San Antonio and Flatonia and between Flatonia and Hearne. Now, under the auspices of Article IX of the 1986 Agreement, the Southern Pacific seeks to establish interdivisional service between Dallas and San Antonio and between Fort Worth and San Antonio. The Southern Pacific proposes a two pronged extension of the existing interdivisional service through home terminal Ennis.

In addition to the Southern Pacific example, the Carriers provided other instances where new interdivisional service overlapped or extended existing interdivisional service pursuant to the 1971 Agreement even though Article VIII, Section 4 of the 1971 National Agreement is substantively identical to Article IX, Section 5 of the 1986 Arbitrated National Agreement. The former provision did not impose a restraint on creating new interdivisional service over territory covered by an existing interdivisional agreement. See Public Law Board No. 3695, Award No. 1 (Seidenberg). During the recent round of national bargaining, the parties were aware of the well entrenched past practice. If they wished to deviate from the past practice, the parties would have written unequivocal language in Article IX, Section 5 to the effect that an extension or rearrangement of present interdivisional service could never be construed as new interdivisional service within the meaning of Article IX. Moreover, Article IX, Section 3 clearly evinces the parties' intent that the Carriers could legitimately extend existing interdivisional service. Section 3 refers expressly to

...previously existing runs which are to be extended...

The parties would not have set up a trial basis procedure for implementing an extended run if the Carriers, in the first instance, lacked the authority to propose an extended interdivisional service. Thus, Section 5 of Article IX does not restrict the Carriers from rearranging or extending existing interdivisional service.

The second question is what shall be the terms and conditions that apply to interdivisional service which is extended or rearranged pursuant to Article IX. The Carriers argue that Section 5 only applies to interdivisional service which remains absolutely intact. The Organization stresses that the conditions in the existing interdivisional service agreement must be preserved and automatically apply to the extended or rearranged service. In our view, the Carriers' construction of Article IX, Section 5 is too narrow while the Organization seeks an overly broad interpretation of Section 5.

Article IX, like its predecessor contract provision, grants a Carrier the right to serve a notice seeking to establish interdivisional service. The Carrier may subsequently establish or refrain from establishing the proposed service. An arbitrated interdivisional run agreement might apply conditions so onerous the Carrier is deterred from instituting the interdivisional service. Since the discretion is vested in the Carrier, a Carrier may not use Article IX as a pretext for taking advantage of the more favorable conditions set forth in Section 2 of Article IX. Section 5 of Article IX bars a Carrier from proposing only a minor modification in an existing interdivisional run with the motive of procuring the more favorable conditions. Thus, Section 5 preserves conditions on existing interdivisional runs or any proposed extended run that is substantially the same as the existing run where the purposeful objective of the extension is to procure the more beneficial conditions in Article IX, Section 2. In resolving the Southern Pacific dispute, Arbitration Board No. 468 should examine the surrounding circumstances and apply Article IX, Section 5 in a manner consistent with our Opinion.

The Committee concludes that the parties must reach a balanced application of Article IX. The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article IX unless it is a substantial recreation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement.

Answer to Issue No. 3: Yes to the extent consistent with the Committee's Opinion.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 4

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Is the engineers extra board a guaranteed amount of money or a guaranteed number ofmiles per day when prorated, and per month when protected for entire month?

Pertinent Agreement Provision

SIDE LETTER 20 - GUARANTEED EXTRA BOARDS, SECTION 2(e).

> (e) While on an extra board established under this rule, each employee will be guaranteed the equivalent of 3000 miles at the basic through freight rate for each calendar month unless the employee is assigned to an exclusive yard service extra board in which event the guarantee will be the equivalent of 22 days' pay at the minimum 5-day yard rate for each calendar month. All earnings during the month will apply against the guarantee. The guarantees of employees who are on the extra board for part of a calendar month will be pro rated.

Discussion

Expressing the guarantee in mileage terms actually operates to decrease the amount of the guarantee by effectively canceling out wage increases. From the relevant negotiating history as well as the purpose of a guaranteed extra board, we conclude that the parties did not intend to reduce the guaranteed earnings of an engineer assigned to a guaranteed extra board.

The Organization contends that Section 2(e) is a thirty day guarantee. The agreed upon answer to Question No. 4 conceptually supports the Organization's argument. In the answer to Question No. 4 (which dealt with non duplicate time payments), the parties concurred that:

Where the obvious intent of the parties was to apply a percentage of a basic day (e.q., 50 miles equals 50 percent), such intent shall be continued (50 percent equals 52, 53, or 54 miles depending on effective date of change.).

Under the Carriers' interpretation, the percentage of basic day compensation accruing to engineers under the guarantee would be equivalent to just 27.78 days of pay when basic day mileage reaches 108 miles. Thus, the overriding intent of Section 2(e) was to fix a guarantee premised on thirty days' basic pay and not to gradually reduce the guarantee through increases in the basic day mileage. Also, extra board engineers protect many classes of service aside from through passenger and through freight service. Yet, those miles are not subject to the increase in the basic day. Our conclusion is slightly at variance with a very literal interpretation of the language in Section 2(e) but the terms must be reasonably applied in light of the parties' intent as well as the agreed upon application of similar contract provisions.

Like Issue No. 2, the Committee emphasizes that it is not adjusting or indexing the 3,000 mile figure to take into account changes in basic day mileage. Rather, the Committee's interpretation of the money equivalent of 3,000 miles at the basic through freight rate is derived from the parties' intent. In essence, the guarantee will be the money equivalent of 3,240 miles at the end of the contract term. We recognize that an engineer on the

guaranteed extra board protects all classes of service. Despite the practical effect of our decision, an engineer may not claim the difference in miles between the basic day miles in through freight service and basic day mileage in the class of service protected.(1) Our decision should not undermine the productivity benefits gained through raising basic day mileage. Similarly, our resolution of this matter is expressly restricted to guaranteed extra boards established under Side Letter 20.

Answer to Issue No 4: See Opinion.

DATED: March 31, 1987

Larry D. McFather
Organization Member

Charles I. Hopkins, Jr.
Carrier Member

John B. LaRocco
Neutral Member

(1) The guarantee is still money as demonstrated by the following example. Assume a guaranteed extra board engineer works five days (during one month) in local way freight service with a fireman in the 200,000 lbs. weight on driver bracket. The engineer's actual earnings total $567.00 (5 x $113.40/day). In accord with our disposition of Issues Four and Five, his monthly guarantee amounts to $3,367.20 (30 x $112.24/day). Assuming he does not have any other earnings and was properly on the board all month, the amount due the engineer is $3,367.20 - $567.00 = $2,800.20 as opposed to the money equivalent of 3,120 miles less 500 miles (2,620 miles or $2,827.32).

Issue No. 5

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What is the rate of pay to be allowed for the guarantee?

Pertinent Agreement Provisions

SIDE LETTER 20 - GUARANTEED EXTRA BOARDS, SECTION 2(e)

> (e) While on an extra board established under this rule, each employee will be guaranteed the equivalent of 3000 miles at the basic through freight rate for each calendar month unless the employee is assigned to an exclusive yard service extra board in which event the guarantee will be the equivalent of 22 days' pay at the minimum 5 day yard rate for each calendar month. All earnings during the month will apply against the guarantee. The guarantees of employees who are on the extra board for part of a calendar month will be pro rated.
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> ARTICLE I - SECTION l(b) - GENERAL WAGE INCREASES
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> (b) In computing the increase under paragraph (a) above, one (1) percent shall be applied to the standard basic daily rates of pay applicable in the following weight-on-drivers brackets, and the amounts so produced shall be added to each standard basic daily rate of pay:
>
> Passenger - 600,000 and less than 650,000 pounds
>
> Freight - 950,000 and less than 1,000,000 pounds (through freight rates)
>
> Yard Engineers - Less than 500,000 pounds
>
> Yard Firemen - Less than 500,000 pounds (separate computation covering five-day rates and other than five day rates)

Discussion

Historically, the reason for using the 950,000 to less than 1,000,000 weight-on-driver bracket when calculating the fixed amount of the percentage wage increases in national agreements was to maintain the preexisting differentials among the various brackets. Thus, Article I, Section l(b) is merely a formula for converting a single percentage increase into a uniform money increase for each bracket.

In some schedule agreements, the parties referred to a specific bracket when they desired to apply a higher rate than the minimum through freight rate. Indeed, some local contracts governing guaranteed extra boards provide for a money guarantee based on equivalent miles and the parties expressly agreed to a rate associated with a particular weight-on-driver bracket.

Thus, the words ...basic through freight rate... means the basic daily through freight rate without any weight-on-driver additive.

Answer to Issue No. 5: The basic daily through freight rate without any weight-on-driver additive.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 6

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May a carrier establish Guaranteed Extra Boards at locations where non-guaranteed extra boards presently are in place?

Pertinent Agreement Provisions

SIDE LETTER 20 - GUARANTEED EXTRA BOARDS - SECTIONS 2(a) AND 2(h)

> (a) Carriers that do not have the right to establish additional extra boards or discontinue an extra board shall have that right.
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> ******
>
> (h) No existing guaranteed extra board will be supplanted by a guaranteed extra board under this rule if the sole reason for the change is to reduce the guarantee applicable to employees on the extra board. A reading of Section 2(a), more particularly the term additional, reveals some ambiguity. However, paragraph (h) is unambiguous. It limits the Carriers' right to supplant an existing guaranteed extra board only if the underlying reason for the substitution is to reduce guarantees. Paragraph (h) is silent regarding the establishment of guaranteed extra boards at points where non-guaranteed extra boards have already been instituted. Thus, the paragraph (h) limitation is inapplicable to supplanting an existing non-guaranteed extra board with a guaranteed extra board.

We must interpret the adjective "additional in Section 2(a) to comport with paragraph (h). As the Organization argues, one of the primary purposes of allowing Carriers to establish more extra boards was to set up guaranteed extra boards at outlying points remote from a supply source. The purpose was consistent with changes in the deadheading rules which made it less desirable for employees to reside at one location and drive to protect sporadic work at an outlying point. From the Organization's viewpoint, the word "additional

means points other than where Carriers already had a right to establish guaranteed extra boards. The Organization specifically contests the Carriers' ability to replace a non-guaranteed extra board with a new guaranteed extra board at supply points. However, only express limits on the Carriers' right to establish additional guaranteed extra boards are in paragraphs (g) and (h). The Organization seeks to amend Section 2(h) to prevent the establishment of guaranteed extra boards at locations where any extra board, either guaranteed or non-guaranteed, presently exists. The most reasonable interpretation of additional in Section 2(a) is that Carriers may add guaranteed extra boards restricted only by the express provisos in Paragraphs (g) and (h) Answer to

Issue No. 6: Yes.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 7.

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May a carrier establish a Guaranteed Road Extra Board and a Guaranteed Yard Extra Board at a single location where only joint seniority is held?

Pertinent Agreement Provisions

SIDE LETTER 20 - GUARANTEED EXTRA BOARDS, SECTIONS 2(e) AND 2(h)

> (e) While on an extra board established under this rule, each employee will be guaranteed the equivalent of 3000 miles at the basic through freight rate for each calendar month unless the employee is assigned to an exclusive yard service extra board in which event the guarantee will be the equivalent of 22 days' pay at the minimum 5 day yard rate for each calendar month. All earnings during the month will apply against the guarantee. The guarantees of employees who are on the extra board for part of a calendar month will be pro rated.
>
> *****
>
> (h) No existing guaranteed extra board will be supplanted by a guaranteed extra board under this rule if the sole reason for the change is to reduce the guarantee applicable to employees on the extra board.

Discussion

Section 2(e) permits a Carrier to assign an employee to an exclusive Yard Service Guaranteed Extra Board. The question at issue concerns points where employees hold both yard and road seniority. The first part of our answer presupposes that there is an existing guaranteed extra board at the location.

Severing seniority through the utilization of separate extra boards effectively reduces the earnings of employees who hold joint seniority. If road engineers are required to protect an exclusive Yard Guaranteed Extra Board as well as the guaranteed extra board covering other classes of service (to maintain joint seniority), they suffer a wage cut contrary to the specific proviso contained in Section 2(h).

The Committee understands that Section 2 of Side Letter 20 gave the Carriers wide discretion in the establishment and operation of guaranteed extra boards in exchange for an acceptable disposition of the long

festering dispute over intercraft pay relationship. Nonetheless, the Organization persuasively argued that the exclusive Yard Extra Board alluded to in Section 2(e) was intended to apply primarily to terminal railroad companies where engineers do not hold any road seniority.

To give full force and effect to Section 2(h), the establishment of an exclusive Yard Guaranteed Extra Board is inherently limited to locations where employees do not hold combination road/yard seniority.

The second portion of our resolution to this issue assumes that there is not a presently existing guaranteed extra board at the location where engineers hold joint seniority.

Besides terminal companies, railroads often operate a closed yard where, even though employees are in a joint seniority district, all the assignments at the location are for yard service. If there is not an existing guaranteed extra board at such a yard, there is no problem with establishing an exclusive Yard Guaranteed Extra Board because not only is Section 2(h) inapplicable but also the exclusive board could hardly operate to the detriment of the employees.

Similarly, Section 2(h) does not preclude the establishment of an exclusive Yard Guaranteed Extra Board at joint seniority locations where there is both yard and road work. Nonetheless, it is assumed both boards would be properly and adequately staffed so that the yard board would protect yard work and the road board would protect road work. It is recognized that there may be times when unexpected mark offs or other unpredictable circumstances require even a properly staffed yard board to protect road work and vice versa. However, it is not contemplated that, for example, a road board be persistently understaffed so as to have the effect of reducing guarantees.

Answer to Question No. 7: See Opinion.

DATED: March 31, 1987

Larry D. McFather
Organization Member

Charles I. Hopkins, Jr.
Carrier Member

John B. LaRocco
Neutral Member

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Dissent to Neutral Member J. B. LaRocco's Opinion to Issue No. 7 This issue submitted by the Brotherhood of Locomotive Engineers to Neutral LaRocco asked the following question:

> "May a carrier establish a Guaranteed Road Extra Board and a Guaranteed Yard Extra Board at a single location where only joint seniority is held?"

The whole purpose of the question was to prevent the carrier from restricting an engineer's seniority if such engineer had joint seniority in both yard and road service. The above quoted question never asked if there was a guaranteed extra board or a non guaranteed extra board in place. We were concerned about the establishment of a yard board at locations where joint seniority was held. To do so would only restrict the earnings of engineers that hold dual seniority and violates Section 2(h). He even stated this in the decision and I quote, "Severing seniority through the utilization of separate extra boards effectively reduces the earnings of employees who hold joint seniority." He further goes on to state, "To give full force and effect to Section 2(h), the establishment of an exclusive Yard Guaranteed Board is inherently limited to locations where employees do not hold combination road/yard seniority." Neutral LaRocco never answered the question as it was presented.

However, in the second half of Neutral LaRocco's Opinion, he then reverses himself and allows the carrier to establish a road and yard extra board at locations where no guaranteed board exits. The organization fails to see any difference in the two situations. He states that at terminal railroads or railroads that operate closed yards, the establishment of a guaranteed yard extra board would not adversely affect the engineers working

thereon, as they have no joint seniority. The organization cannot disagree with this point. However, in the closing paragraph of Mr. LaRocco's Opinion, he contradicts his previous rulings by stating that Section 2(h) of Side Letter 20 ...does not preclude the establishment of an exclusive yard Guaranteed Extra Board at joint seniority locations where there is both yard and road work.@n, and further goes on to state that under certain conditions it is even proper to use engineers assigned to the lesser guaranteed yard extra board to supplant an exhausted guaranteed road extra board. This is not acceptable to the organization, because it encourages the carrier to keep the road board short and the yard board long.

It is the organization's opinion that Neutral LaRocco clearly went outside of the perimeters of the question asked of him in issuing his Opinion in Issue No. 7. As previously stated, the question was can the carrier establish both a guaranteed road board and guaranteed yard extra board at a single location where only joint seniority is held. This question clearly did not presuppose any guaranteed extra boards or non guaranteed extra boards at locations where extra boards are presently established.

In summary, the organization feels the question was sufficiently answered in paragraph 4 of Neutral LaRocco's Opinion which states in part: "...the establishment of an exclusive yard guaranteed extra board is inherently limited to locations where employees do not hold combination road/yard seniority.

Larry D. McFather

ISSUE NO. 8

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Can the carrier adjust daily guarantees in proportion to the increase in the through freight basic day miles?

Pertinent Agreement Provisions

ARTICLE IV - PAY RULES Section 2 - Miles and Basic Day and Overtime Divisor "(a) The miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed as provided below:

	Through Freight Service		**Through Passenger Service**	
Effective Date of Change	**Miles in Basic Day**	**Overtime Divisor**	**Miles in Basic Day**	**Divisor Overtime**
July 1, 1986	104	13.0	104	20.8
July 1, 1987	106	13.25	106	21.2
June 30, 1988	108	13.5	108	21.6

SECTION 2(b)

> "Mileage rates will be paid only for miles run in excess of the minimum number specified in (a) above."

Discussion

Although Issue No. 8 is broadly worded, the Issue has apparently arisen on just a single railroad, the Duluth, Missabe and Iron Range Railway Company (DM&IR), and even more specifically, the problem centers on two turnaround runs between Biwabik and two taconite plants. The total round trip mileage for the two trips is 53.8 and 56.3 miles respectively.

Schedule Rule 15 of the applicable BLE-DM&IR Agreement reads:

> "In all road service on runs where the actual distance traveled between the initial and final terminal is less than 100 miles, enginemen will be allowed l00 miles and in addition thereto any allowance given by other rules of this agreement at both the initial and final terminals."

On the two turnaround runs in question, engineers are most often (if not always) compensated pursuant to Schedule Rule 26 which provides:

> "Enginemen employed on crews operating out of Biwabik in turnaround service between Biwabik and Minntac or Biwabik and Minorca will be allowed a minimum of 153 miles at through freight rates of pay or the amount due them under Rule 15 whichever is greater."

Subsequent to July 1, 1986, the DM&IR paid engineers on these runs a basic day plus mileage computed by the difference between 153 miles and the number of miles in the basic day as set forth in Article IV, Section 2(a). Thus, engineers working on the two turnaround runs currently receive a basic day plus forty seven miles (106 miles subtracted from 153 miles).

The Organization argues that the DM&IR's reduction of the number of guaranteed miles by the amount of the incremental increase in basic day miles constitutes an improper erosion of the arbitraries and allowances due to engineers on the turnaround services. The 53 additional miles was a substitute for initial and final terminal and delay, meal period allowances, inspection of locomotive time payments, etc. The 153 miles represents an earnings guarantee which the Organization asserts is not subject to the increase in the basic day miles for through freight service.

While this issue begs this Committee to apply equity, the literal language in Article IV as well as the Schedule Rules favors the DM&IR's position. If this Committee were to endorse the Organization's interpretation of Rule 26, we would effectively transform the fixed mileage guarantee from 153 miles to 159 miles (under the current basic day of 106 miles). Even though the actual mileage for the two turnaround trips is substantially less than a basic day, the total minimum mileage allowance under Schedule Rule 26 must take into account the change in the basic day because the 153 miles of guaranteed compensation is calculated"... at through freight rates of pay..."

Although the DM&IR prevails on this Issue, this Committee argues the BLE and the DM&IR to negotiate amendments to Rules 15 and 26 or to restructure the aggregate compensation on the two turnaround runs so that pay becomes proportional with the gradual increase in basic day miles. Given the language in Rules 15 and 26, there is ample room for the BLE and DM&IR to negotiate a mutually acceptable compromise. It is better for the parties to solve their problems at the bargaining table rather than through arbitration.

Answer to Issue No. 8: Yes, but the Answer is specifically restricted to the application of Schedule Rule 26 on the DM&IR.

DATED: May 16, 1988

Larry D. McFather
Orsanization's Member

Charles I. Hopkins,Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 9

top

Are guaranteed extra boards established prior to Arbitration Award No. 458 to be adjusted to reflect the increase in the basic day miles?

Pertinent Agreement Provision

ARTICLE IV - PAY RULES Section 2 - Miles in Basic Day and Overtime Divisor"

(a) The miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed as provided below.

	Through Freight Service		Through Passenger Service	
Effective Date of Change	**Miles in Basic Day**	**Overtime Divisor**	**Miles in Basic Day**	**Divisor Overtime**
July 1, 1986	104	13.0	104	20.8
July 1, 1987	106	13.25	106	21.2
June 30, 1988	108	13.5	108	21.6

Discussion

This Issue is related to our decision on Issue No. 2. In Issue No. 2, this Committee briefly discussed but did not resolve a dispute regarding a preexisting (prior to the effective date of the Award of Arbitration Board No. 458) guaranteed extra board on the Burlington Northern Railroad (BN). Article 22, Section C(2)(a) of the former Frisco Schedule Agreement reads:

> "Subject to the conditions prescribed in this Section C, Engineers assigned to the extra board shall be guaranteed the money equivalent of 3,250 miles at the minimum through freight rate of pay (now $74.95 per l00.miles) per month. All payments from this Carrier except meal, lodging and personal expense allowances or reimbursements shall be included in computing the amounts due under this guarantee."

During our discussion of Issue No. 2, this Committee summarized the positions of the BN and the Organization as follows:

> "The BN asserts that Article IV, Section 2(a) of the Arbitrated National Agreement lowered the value of one mile. After July 1, 1986, the BN calculates the 3,250 guarantee based on each mile being worth 1/104th of a basic day (currently 108.06). According to the BN, the money equivalent of 3,250 miles is $3,376.75. The Organization computes the value of one mile as 1/l00th of the daily rate or $3,513.25 per month."

Next, the Committee formulated a guideline for resolving the dispute. We wrote:

> "With regard to the BN dispute as well as disagreements which might arise on any of the signatory railroads, the Committee finds that Article IV, Section 2(a) changed only the basic mileage in through freight and through passenger service. Since Article IV, Section 2(a) did not impliedly raise mileage limitations, the provision cannot be similarly construed as an implied modification of other rules in existing schedule agreements. Therefore, if any railroad believes that wages paid on a guaranteed assignment or extra board should be adjusted to reflect the increase in the basic miles, the particular railroad's justification for the adjustment must be derived from the language (tying the guarantee directly to basic day miles) in its schedule agreement as opposed to any implication flowing from Article IV, Section 2(a) of the 1986 National Agreement."

To reiterate, we emphasize that disputes like the one herein must be decided on a case by case basis according to the principle enunciated in Issue No. 2. Focusing on the BN dispute, the specific issue is whether or not the guarantee in Article 22, Section C(2)(a) is expressly and directly tied to the basic day miles set forth in Article IV, Section 2(a) of the 1986 Arbitrated National Agreement.

The explicit reference to the through freight rate of pay as well as the parenthetical clause in Article II, Section

C(2)(a) directly links the guarantee to basic day mileage in Article IV, Section 2(a). The parenthetical expression describes the guarantee according to both the basic day pay rate and basic day miles. Thus, as the daily rate increased, the pay rate per 100 miles was accordingly adjusted upward. With the change in basic day miles, there must be corresponding adjustment to the number of miles in the parentheses. Had the parties wanted to compute the guarantee solely on basic days, the words "per l00 miles" would not appear in the Schedule Rule. Unlike Section 13(a) of the June 7, 1982 Memorandum Agreement on the Louisville and Nashville Railroad, the former Frisco Schedule Rule is directly tied to basic day miles in through freight service. Even though engineers on the Frisco Extra Board protect all classes of service, the Schedule Rule expressly refers to the through freight service rate of pay according to both the basic day wage rate and basic day mileage.

In essence, the Organization is urging us to reconsider our holding in Issue No. 2 wherein we declined to proportionately adjust mileage regulations to the increase in basic day mileage. Adopting the Organization's argument herein would be tantamount to indexing the guarantee upward since the 3,250 mile guarantee would be converted to 3,445 miles. Furthermore, under the Organization's interpretation, an extra board engineer could reap a windfall. An extra board engineer who did not work the entire month could collect his guarantee and earn more than a regularly assigned engineer in through freight service who physically worked.3,250 miles during the month (assuming no overtime mileage). Our holding on this Issue is restricted to the BN dispute.

Answer to Issue No. 9: Yes, but the holding is restricted to the BN dispute.

DATED: May 16, 1988

Larry D. McFather
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John B. LaRocco
Neutral Member

ISSUE NO. 10

top

Does Article VI change or amend the existing applications of pay rules on individual carriers when engineers tie up on the road in compliance with the Hours of Service Act?

Pertinent Agreement Provisions ARTICLE VI - DEADHEADING "Existing rules covering deadheading are revised as follows:

Section 1 - Payment When Deadheading and Service Are Combined "(a) Deadheading and service may be combined in any manner that traffic conditions require, and when so combined employees shall be paid actual miles or hours on a continuous time basis, with not less than a minimum day, for the combined service and deadheading. However, when deadheading from the away-from-home terminal to the home terminal is combined with a service trip from such home terminal to such away-from-home terminal and the distance between the two terminals exceeds the applicable mileage for a basic day, the rate paid for the basic day mileage portions of the service trip and deadhead shall be at the full basic daily rate.

SIDE LETTER #4, EXAMPLE 11

> "How is an engineer to know whether or not deadheading is combined with service.? [sic]
>
> "A. When deadheading for which called is combined with subsequent service, the engineer should be notified when called. When deadheading is to be combined with prior service, the engineer should be notified before being relieved from service. If not so notified, deadheading and service cannot be combined."

Discussion.

Although the Organization argues that Article VI, Section 1(a) did not disturb local rules governing the treatment of an engineer whose service time terminates under the Hours of Service Act, Article VI, Section 1(a) of the May 19, 1986 Arbitrated National Agreement does not prohibit combining service with deadheading when an engineer's time expires under the law. Since deadheading follows the service component of a trip when the law has overtaken an engineer, the gravamen of this dispute involves the timing of the notice to the engineer that the Carrier will combine the working portion of his trip with deadheading for payment of actual miles or hours on a continuous time basis.

The Organization charges that some Carriers are improperly combining the working segment of the trip with deadheading subsequent to the legal maximum hours of service to pay engineers on a continuous trip basis without any notification to the affected engineer. In other cases, the Organization submits that the engineer does not receive notice until going off duty at the final terminal. (The Organization also notes that for pay purposes, an engineer may be relieved from duty well before he registers off duty.) Pursuant to Example 11 of Side Letter #4, the Organization argues that the Carrier may combine deadheading with service only when an engineer receives notification prior to being relieved from the working component of his trip.

The Carriers contend that since Article VI, Section 1(a) was adopted from the Consolidated Rail BLE Agreement, this Committee should follow joint interpretations governing and arbitration decisions interpreting the Conrail Rule. The Carrier cites Award No. 6 of Special Board of Adjustment No. 894 (Van Wart) for the proposition that deadheading and service may be combined when an engineer is outlawed under the Hours of Service. Act despite the absence of notice before the conclusion of the service portion of the engineer's trip. Board No. 894 only required the Carrier to notify the engineer before he marked off duty. In summary, the Carrier advocates a pragmatic application of the notice provisions especially since an engineer who has been overtaken by the Hours of Service law suffers no harm when deadheading is combined with service so long as the engineer is aware of how his pay will be computed prior to going off duty.

The Committee finds strong support for the Organization's position based on the literal language in Side Letter #4, Example 11 and agreed upon Question and Answer No. 3 under Article VI, Section 1. Agreed upon Question and Answer No. 3 reads:

> "Q-3: How is a crew or individual to know whether or not deadheading is combined with service?
>
> "A-3: When deadheading for which called is combined with subsequent service, will be notified when called. When deadheading is to be combined with prior service, will be notified before being relieved from prior service. If not so notified, deadheading and service cannot be combined."

Example 11 in Side Letter #4 and Question and Answer No. 3 under Article VI, Section 1 are identical except the parties were more precise in the latter Answer. They specifically inserted the word "prior" before the last word "service" in the second sentence of agreed upon Answer No. 3. The addition of the adjective "prior," manifests the parties intent to treat the notice requirement as more than a mere technicality.

However, the technicality arises because an engineer does not incur any discernable detriment when the Carrier fails to tender him notice prior to the end of the service component of his trip when the termination of the service portion is due to the Hours of Service law. The source of Article VI, Section 1(a) is Article G-c-1 of the Conrail Agreement. The parties agreed upon interpretation of Article G-c-1 differs slightly but significantly with Side Letter #4 and agreed upon Question and Answer No. 3 under Article VI, Section 1. Agreed upon Question and Answer No. 1 on the Conrail System specifically states that when "... service is to be combined with deadheading, the engineer will be notified before he marks off duty after performing service." In contrast, the parties at the national level mandated that the notice must be given "... before being relieved of prior service." Special Board of Adjustment No. 894 premised its decision on the language in the Conrail agreed upon Question and Answer, as opposed to agreed upon Question and Answer No. 3 under Article II, Section 1(a). Therefore, this Committee is reluctant to carve out an exception to the parties' precise examples and agreed upon answers simply because an engineer deadheads after being overtaken by the law.(1)

In our advisory capacity, we urge the parties to adopt a more practical answer to this issue especially if they are able to reach a universal understanding of when an engineer goes off duty (1) The Committee notes that agreed upon Question and Answer No. 8 under Conrail Article G-c-1 buttresses our determination, made at the onset, that the Carriers have the prerogative to combine service and deadheading when a road engineer is cutoff enroute because the Hours of Service law overtakes him for the purpose of determining when an engineer must receive the necessary notice.

Answer to Issue No. 10: Yes, provided the Carrier complies with the notice requirement in Example 11 of Side Letter #4 and agreed upon Question and Answer No. 3 under Article VI, Section 1.

DATED: May 16, 1988

Larry D. McFather
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Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 11

top

Is the Carrier allowed under Article VI to combine deadheading with an hourly component job such as yard service at an outlying point?

Pertinent Agreement Provision ARTICLE VI - DEADHEADING "Existing rules covering deadheading are revised as follows:

Section 1 - Payment When Deadheading and Service Are Combined "(a) Deadheading and service may be combined in any manner that traffic conditions require, and when so combined employees shall be paid actual miles or hours on a continuous time basis, with not less than a minimum day, for the combined service and deadheading. However, when deadheading from the away-from-home terminal to the home terminal is combined with a service trip from such home terminal to such away-from-home terminal and the distance between the two terminals exceeds the applicable mileage for a basic day, the rate paid for the basic day mileage portions of the service trip and deadhead shall be at the full basic daily rate."

Discussion

Article VI, Section 1 grants the Carriers the unilateral authority to combine service and deadheading whenever, "...traffic conditions require..." The Carriers' prerogative is conditioned only on proper notice. (See Issue No. 10.) The introductory clause to Article VI expressly announces that existing deadheading rules are revised and thus, Article VI supersedes inconsistent rules on the various railroads. The unequivocal language of Article VI shows that the parties did not exempt deadheading to outlying yard jobs merely because many yard assignments have fixed starting times within a guaranteed starting time bracket.

During its presentation of this case, the Organization alluded to a specific dispute which arose on the former Seaboard Coast Line Railroad. An engineer deadheaded 35 miles in each direction to perform a yard assignment at an outlying point. His total time on duty was ten hours, consisting of one hour deadheading to the assignment, eight hours on the yard job and one hour in return deadheading. The proper payment for this permissible combination of deadheading with service is eight hours plus two hours overtime.

The Answer to Issue No. 11: Yes.

DATED: May 16, 1988

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ISSUE NO. 12
top

Does a runaround occur when deadheading and service are combined out of the away- from-home terminal and there are rested and available engineers at such terminal?

Pertinent Agreement Provision

ARTICLE VI - DEADHEADING "Existing rules covering deadheading are revised as follows:

Section 1 - Payment When Deadheading and Service Are Combined "(a) Deadheading and service may be combined in any manner that traffic conditions require, and when so combined employees shall be paid actual miles or hours on a continuous time basis, with not less than a minimum day, for the combined service and deadheading. However, when deadheading from the away-from-home terminal to the home terminal is combined with service trip from such home terminal to such away-from-home terminal and the distance between the two terminals exceed the applicable mileage for a basic day, the rate paid for the basic day mileage portion of the service trip and deadhead shall be at the full basic daily rate."

Discussion

Prior to the May 19, 1986 Arbitrated Agreement, engineers who deadheaded from their home terminal to their away-from-home terminal were released (to avoid runaround claims). This dispute concerns whether or not the Carriers may combine service with deadheading to engineers working in pool or unassigned service operating under a first-in and first-out basis for their runs. More specifically, does a runaround occur when an engineer is directed to deadhead from his home terminal to his away-from-home terminal and then immediately performs a working trip back to his home terminal in combined service on a continuous mileage or time basis even if another engineer is rested and available at the away-from-home terminal? To promote efficient operations, the Carriers are most likely to combine deadheading with service on runs involving mileage totaling less than 106 miles (the current basic day).

The Organization relies on agreed upon Question and Answer No. 1 under Article VI, Section 2 which reads:

> "Q-1: Can a runaround occur when a crew working into the away-from-home terminal is relieved and deadheaded home separate from service?
>
> "A-1: Local runaround rules continue to apply." [Emphasis added.]

The above Question assumes that the Carrier has elected to separate deadheading from the service component of the engineer's trip and thus, the Answer is inapplicable to Issue No. 12.

Next, the Organization argues that since Arbitration Award No. 458 did not address runarounds or engineers' order of turn, the local rules survived.

An examination of the historical evolution of the rule discloses that the first sentence of Article VI, Section 1(a) was lifted from Paragraph (a) of Article G-c-1 in the BLE Agreement with the Consolidated Rail Corporation. The Conrail Rule also provides that when deadheading is combined with service, away-from-home terminal crews may be deadheaded without regard to the standing of other crews on the board. (See Paragraph (b) of Article G-c-1.) Put differently, the combination of deadheading with service does not result in running around a rested and available engineer on the Extra List or in a pool. Moreover, the genesis of the Conrail Rule was an almost identical provision on the former Pennsylvania Railroad. The rule, which dates back to 1928, was interpreted to allow deadheading in and out of an away-from-home terminal regardless of whether or not engineers at the away-from-home terminal were rested and available for service. (See the Interpretation

Issued by the Pennsylvania Railroad System Joint Reviewing Committee Engine and Train Service Employees.] This interpretation was followed on the former Pennsylvania and then carried forward on the successor line, Conrail. Absent a distinguishing interpretation (such as in Issue No. 10), this Committee must affirm the well entrenched past practice emanating from the railroad where the rule originated. Indeed, in agreed upon Question and Answer No. 1 under Article VI, Section 1, the parties contemplated that the new deadheading rule would be applied in a blanket fashion. Even though the Question and Answer addressed the problem of notice, the parties implicitly anticipated that crews could be deadheaded in and out of away- from-home terminals subject only to the notice requirement despite the existence of runaround and first-in, first-out rules on the various railroad properties. In view of the broad language in the introductory clause to Article VI, the local runaround rules must give way to Article VI, Section 1(a) of the Arbitrated National Agreement unless deadheading is separated from service.

Answer to Issue No. 12: No.

DATED: May 16, 1988

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ISSUE NO. 13

top

Can a Carrier unilaterally eliminate a schedule rule which required preparatory time under Section 3 of Article VIII?

Pertinent Agreement Provision

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK Section 3 - Incidental Work "Road and yard employees in engine service and qualified ground service employees may perform the following items of work in connection with their own assignments without additional compensation:

"(a) Handle switches

"(b) Move, turn, spot and fuel locomotives

"(c) Supply locomoties (sic) except for heavy equipment and supplies generally placed on locomotives by employees of other crafts

"(d) Inspect locomotives

"(e) Start or shutdown locomotives

"(f) Make head-end air tests

"(g) Prepare reports while under pay

"(h) Use communication devices; copy and handle train orders, clearances and/or other messages

"(i) Any duties formerly performed by firemen."

Discussion

Schedule Rules 15 and 17 of the BLE Agreement on the former Wabash (now Norfolk and Western) read in pertinent part:

"RULE 15 "YARD SERVICE

***

"Sec. 10. Time of yard Engineers will begin not less than ten (10) minutes prior to the time for which they are called and will end ten (10) minutes after the time engine is placed on designated track, exclusive of the time off for meals, at the end of the day's work, when the Engineer will be considered released.

"Sec. 11. Time of yard Engineers on double or more crewed engines will commence at time required to relieve the Engineer on duty and end when they are relieved by the other Engineer, except that ten (10) minutes at the beginning and ending of the day will be allowed to Engineers on double or more crewed engines, in event that relief Engineer does not actually relieve the Engineer on duty while in service."

"RULE 17 "BEGINNING AND ENDING DAY

"Sec. 1. Time of road Engineers will begin no less than twenty (20) minutes prior to the time for which they are called and will end twenty (20) minutes after placing engine on designated track, when Engineer will be considered released. "Sec. 2. Road Engineers will be given not less than twenty (20) minutes undisturbed time to prepare engine, and in event instructions require engine to leave designated track any number of minutes prior to the time for which Engineers are called, the Engineers must have the above mentioned undisturbed time to prepare engine prior to that specified time to leave designated track."

Subsequent to the effective date of the May 19, 1986 Arbitrated National Agreement, the Norfolk and Western Railway (N&W) vitiated Schedule Rules 15 and 17 for engineers on the former Wabash property.

Both the Organization and the N&W cite agreed upon Question and Answer No. 2 under Article VIII, Section 3 which states:

"Q-2: An existing rule provides for a preparatory time arbitrary payment to engineers and firemen for each tour of duty worked 'for all services in care, preparation and inspection of locomotives, including the making out of necessary reports required by law and the company and being on their locomotive at the starting time of their assignments.' Does Section 3 of Article VIII contemplate the elimination of such an arbitrary?

"A-2: No, if the engine service employees are required to report for duty in advance of the starting time of the assignment."

According to the N&W, a review of the historical application of the Schedule Rules discloses that the parties and the First Division of the National Railroad Adjustment Board interpreted the rules as granting an engineer an arbitrary payment regardless of whether the engineer performed preparatory tasks or reported to work (10 minutes or 20 minutes) prior to the time for which he was called for the service trip. Relying on Article VIII, Section 3, Subsections (d) and (g), the N&W contends that engineers may be required to inspect their locomotives and prepare necessary reports "... in connection with their own assignments without additional compensation ..." The N&W emphasizes that because it does not require engineers to report for duty in advance of the starting time for their assignment, it properly eliminated the preparatory time arbitrary.

On the other hand, the Organization asserts that agreed upon Question and Answer No. 2 preserved the preparatory time payment in the two N&W Schedule Rules. The Organization further submits that the Schedule Rules represent required time on duty (for engineers) in advance of the starting time of the

engineers' assignment. Thus, the Organization stresses that Rules 15 and 17 do not vest the Carrier with the option of removing the advance reporting requirement.

Although the preparatory time set forth in N&W Schedule Rules 15 and 17 has been characterized as an arbitrary, the added compensation is more analogous to pay for time worked since not only does the engineer actually perform the preparatory tasks but he also reports to duty in advance of the time for which he was called. Sitting without a referee, the National Railroad Adjustment Board, First Division, held in Award No. 21388

> "Under the provisions of Rule 15, Section 10, claimant is entitled to the time as claimed for reporting ten minutes in advance of the regular reporting time of his crew. This allowance in addition to the basic day as provided in Rule 15, Section 2."

The N&W is bootstrapping the Schedule Rules when it first eliminates the requirement that engineers report in advance of their starting time and then justifies its denigration of the preparatory time payment because the engineer does not report to duty ten or twenty minutes before his starting time. Agreed upon Answer to Question No. 2 would be rendered completely meaningless and superfluous if the N&W could manipulate the Schedule Rules to avoid paying the preparatory time compensation. In essence, agreed upon Question and Answer No. 2 would not preserve any preparatory payments if a railroad could simply modify a schedule rule requiring engineers to report in advance of the time for which called so they can perform preparatory work. Condoning the N&W's position herein would completely circumvent agreed upon Question and Answer No. 2.

We note that agreed upon Question and Answer No. 2 governs only preparatory time. The agreed upon interpretation of Article VIII, Section 3 is inapplicable to the payment for time after an engineer places his engine on the designated track.

Answer to Issue No. 13: No, unless the Schedule Rule does not require engine service employees to report to duty in advance of the starting time of the assignment.

DATED: May 16, 1988

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ISSUE NO. 14

top

A. The Organization's Statement of the Issue Is an engineer who is required to relocate due to the establishment of an assignment through his home terminal eligible for a comparable housing allowance when moving to a higher cost real estate area?

B. The Carriers' Statement of the Issue Is the issue of "comparable housing" one which can properly be raised by the BLE during negotiations over the establishment of Interdivisional Service pursuant to Article IX of the May 19, 1986 BLE National Agreement?

Pertinent Contract Provision

ARTICLE IX - INTERDIVISIONAL SERVICE

Section 7 - Protection

"Every employee adversely affected either directly or indirectly as a result of the application of this rule shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May

1936, except that for the purpose of this Agreement Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 6 years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

"Any employee required to change his residence shall be subject to the benefits contained in Sections 10and 11 of the Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400.00) and five working days instead of the 'two working days' provided by Section 10(a) of said agreement. Under this Section, change of residence shall not be considered 'required' if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

"If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms and obligations of both the carrier and employee under such agreements, in lieu of the benefits provided in this Article."

Discussion

In its May 19, 1986 Award, Arbitration Board No. 458 stressed the commonality of interests among the classes of operating employees represented by the BLE and United Transportation Union (UTU). Speaking for the Board, Arbitrator Dennis observed:

"In the Board's judgment, the principal consideration supporting adoption of the tentative agreement is the UTU Agreement of October 31, 198S. That agreement covers almost the identical set of issues and governs employees peforming (sic) the same work; i.e. railroad operating employees. In fact, the UTU Agreement applies to ground service employees as well as engineers and firemen, the employee classes represented by the BLE. The commonality of interests that these two groups of employees share is obvious. It is equally obvious that harmony among the pay and work rules governing these two groups must exist. As a practical matter, efficient rail operations demand no less."

More particularly, one of the Carriers' avowed goals during the last round of national negotiations was to obtain uniform interdivisional service rules in the UTU and BLE Agreements. For the most part, the Carriers were successful. Article IX of the October 31, 1985 UTU National Agreement closely parallels, but is not identical to, Article IX of the May 19, 1986 BLE Arbitrated National Agreement.

During the course of answering affirmatively to the issue of whether or not UTU Article IX applied to situations where a railroad sought to establish interdivisional service to operate through an existing home terminal, the UTU Joint Interpretation resurrected the comparable housing allowance benefit originally set forth in Article XII, Section 2(a), Paragraph 3 of the January 27, 1972 UTU National Agreement. The UTU Joint Interpretation Committee wrote:

> "The conditions which prevail relative to establishment of interdivisional service through an existing home terminal, in addition to those prescribed in Article IX of the October 31, 1985 National Mediation Agreement, include application of the meaning and intent of paragraph three of Section 2(a) of Article XII, Interdivisional Service, of the National Agreement of January 27, 1972 with respect to whether or not a rule under which such runs are established should contain a provision that special allowances to home owners should be included because of moving to comparable housing in a higher cost real estate area." [Emphasis in text.]

In summary, the UTU Joint Interpretation Committee ruled that the comparable housing allowance should be carried forward and incorporated into the October 31, 1985 UTU National Agreement. The Carriers correctly point out that there was no similar homeowners' allowance in the May 13, 1971 BLE National Agreement. While the origin of the comparable housing allowance provision is obscure, this Committee must promote the overriding and necessary policy of attaining uniform interdivisional service rules in the operating crafts. The existence of one or two minor discrepancies between Article IX of the May 19, 1986 Arbitrated National Agreement and Article IX of the October 31, 1985 UTU National Agreement is an inadequate justification for us to forge additional differences between the interdivisional service rules in the two national agreements.

Creating more distinctions between BLE and UTU interdivisional service rules undermines the emphasis Arbitration Board No. 458 placed on the commonality of interests among employees in engine, train and yard service. Indeed, the UTU Joint Interpretation Committee, when adjudicating a final terminal delay dispute, brought dissimilar UTU provisions into conformity with the more favorable BLE final terminal delay terms. We endorse the trend toward uniformity in the BLE and UTU National Agreements.

Therefore, even though the comparable housing allowance is neither found in Article IX, Section 7 of the May 19, 1986 Arbitrated Agreement nor in any prior BLE National Agreement, the protective benefit is an implied element of Article IX, Section 7.

This Committee ruling is narrow. The matter of comparable housing is a subject that the Organization may raise during bargaining over the establishment of interdivisional service. If the subject of comparable housing arises, the parties and an arbitrator should have a compelling justification for including a comparable housing benefit in an interdivisional service arrangement based on a specific finding that excluding the benefit would work an injustice on involved engineers. The intent of the comparable housing allowance is to prevent an affected engineer from being worse off with respect to his housing status due to the introduction of interdivisional service as opposed to upgrading an engineer's real estate status at a carrier's expense.

Comparability in real estate is a vague term virtually incapable of being precisely defined. Obviously, there are obstacles to applying such a nebulous benefit in a practical fashion. Thus, the comparable housing allowance should not delay the establishment of interdivisional service. Indeed, it may be impossible to apply comparable housing until after an affected engineer sells his current residence and purchases a home at his new location. Neither the parties nor arbitrators are real estate experts. Because the comparable housing allowance poses feasibility problems and since the parties and arbitrators lack expertise in real property, an arbitrator (who has first determined that a comparable housing allowance is an appropriate subject for inclusion in the interdivisional agreement) might wish to retain jurisdiction to later address any comparable housing claims on a case by case basis. When exercising his retained jurisdiction, the arbitrator should have the authority to receive expert opinions from real estate appraisers in both the new and old locations. There are probably numerous factors bearing on housing comparability. The plethora of factors to consider within the concept of comparable housing underscores the necessity for consulting with real estate experts. Nonetheless, during the course of their negotiations, the parties may be able to promulgate a different method for addressing the feasibility problems inherent in implementing a comparable housing allowance.

In addition, the parties should understand that there is not any single factor which would automatically trigger an entitlement to a comparable housing allowance. The process does not involve simply the comparison of average or median real estate prices between two locations. Similarly, an engineer is not necessarily placed in a worse position merely because he must pay more (or put down a larger down payment) to purchase what is regarded as comparable" housing at a new locale. Determining comparability involves, to some extent, forecasting the future. Thus, an engineer might reap a greater gain on the eventual sale of his new home, due to accelerated appreciation, than if he had retained his former house. Thus, the parties should avoid concentrating on one specific criterion. Rather, the comparable housing benefit must be adjusted to accommodate all the surrounding circumstances of each transaction.

To reiterate, a comparable housing allowance may be an appropriate subject for negotiation over an interdivisional service agreement based on a specific finding that an injustice would otherwise result. If comparable housing is included in an interdivisional service agreement, this Committee has confidence in the parties' ability to cautiously approach the subject of comparable housing with reasonableness, good faith and prudence.

Answer to the Organization's Question at Issue: Perhaps. The comparable housing allowance is a subject which the Organization may raise during bargaining over the establishment of interdivisional service under Article IX.

Answer to the Carriers' Question at Issue: Yes.

DATED: May 16, 1988

Larry D. McFather Charles I. Hopkins, Jr.

Organization's Member Carriers' Member

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ISSUE NO. 15

top

Are engineers entitled to deadhead payment of two basic days when deadheading between the terminals of Amarillo and Waynoka under the provisions of Articles VI and IX of Arbitration Award No. 458?

Pertinent Agreement Provisions

ARTICLE VI - DEADHEADING

Section 2 - Payment for Deadheading Separate From Service

> "When deadheading is paid for separate and apart from service:
>
> "(a) For Present Employees "A minimum day, at the basic rate applicable to the class of service in connection with which deadheading is performed, shall be allowed for the deadheading, unless actual time consumed is greater, in which event the latter amount shall be allowed.
>
> " Side Letter 9A, Paragraphs 1 & 2.
>
> "This refers to Article IX, Interdivisional Service, of the Agreement of this date.
>
> "It was understood that except as provided herein, other articles contained in this Agreement, such as (but not limited to) the final terminal delay and deadhead articles, apply to employees working in interdivisional service regardless of when or how such service was or is established. However, overtime rules in interdivisional service that are more favorable to the employee than Article IV, Section 2, of this Agreement will continue to apply to employees who established seniority in engine service prior to November 1, 1985 while such employees are working interdivisional runs established prior to June 1, 1986."

Discussion

The Organization and the Atchison, Topeka and Santa Fe Railway Company (AT&SF) entered into the following joint statement of the facts underlying Issue No. 17:

> "On May 12, 1954, the Carrier and BLE entered into an interdivisional agreement ... to run engineers between Amarillo, Texas, and Waynoka, Oklahoma, through the home terminal of Canadian, Texas. This Agreement provided for a basic day to be paid working engineers for the segment between Amarillo and Canadian (99 miles) and a new basic day to be paid for the segment between Canadian and Waynoka (108 miles). Engineers deadheading were paid actual miles between Amarillo and Waynoka under schedule rules."

Side Letter 9A expressly provides that the deadheading provisions in the May 19, 1986 Arbitrated National Agreement apply to all interdivisional service even if such service was established before the effective date of the Agreement.

In addition, the past practice on this property supports the AT&SF's position because although working engineers may have submitted two tickets for the miles on each side of the Canadian terminal, engineers deadheading were paid actual miles between Amarillo and Waynoka. Pursuant to the final sentence of Article VI, it was the Carrier's prerogative to preserve existing deadhead rules or apply Article VI of the Arbitrated

National Agreement. The Carrier elected the latter.

Under Article VI, Section 2(a), the proper payment for deadheading apart from service between Amarillo and Waynoka is a minimum day "... unless actual time consumed is greater ..." than a day in which event the engineer is allowed actual time.

The Answer to Issue No. 15: No.

DATED: May 16, 1988

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 16

top

Is the five-mile minimum payment provided for under Section 8 of the November 6, 1981 Memorandum of Agreement abrogated by the provisions of Articles V and VIII of Arbitration Award No. 458?

Pertinent Agreement Provisions

ARTICLE V - FINAL TERMINAL DELAY, FREIGHT SERVICE

Section 1 - Computation of Time "In freight service all time, in excess of 60 minutes, computed from the time engine reaches switch, or signal governing same, used in entering final terminal yard where train is to be left or yarded, until finally relieved from duty, shall be paid for as final terminal delay; provided, that if a train is deliberately delayed between the last siding or station and such switch or signal, the time held at such point will be added to any time calculated as final terminal delay.

"ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK

Section 1 - Road Crews

"Road crews may perform the following work in connection with their own trains without additional compensation:

"(a) Get or leave their train at any location within the initial and final terminals and handle their own switches. When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty point fixed for that assignment and such point is not within reasonable walking distance of the on and off duty point, transportation will be provided."

Discussion

A Memorandum of Agreement, dated November 6, 1981, between the Organization and the Atchison, Topeka and Santa Fe Railway Company (AT&SF) provided for moving the on and off-duty point for engineers. This agreement was similar to an earlier agreement in 1968 wherein the on and off-duty point was initially moved. The pertinent portion of the 1981 Agreement reads:

"Engineers traded off at the 'A' Yard office (new tie-up point) under provisions of Appendix 6 of the schedule will be paid final terminal delay in accordance with schedule rules and interpretations with a minimum of five miles.

The Organization argues that the five mile payment is preserved inasmuch as it was a payment separate and apart from final terminal delay. Therefore, even though Article V of Arbitration Award No. 458 changed the final terminal delay rule, the five-mile minimum payment should continue to apply to engineers who trade off at the 'A' yard office.

The AT&SF contends that not only did Article V eliminate the five-mile minimum payment, which was tied to final terminal delay in the language contained in the 1981 Memorandum of Agreement, but Article VIII also eliminated any extra payment for tying up a train within the terminal. Therefore, the AT&SF concludes that both the final terminal delay rule and Appendix 6 were changed or abrogated by Arbitration Award No. 458.

It is clear that the intent of Articles V and VIII of Arbitration Award No. 458 was to supersede any existing rules payments or practices in order to establish a uniform national rule. The five-mile minimum payment was abrogated by Articles V and VIII.

Answer to Issue No. 16: Yes.

DATED: May 16, 1988

Larry D. McFather
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Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 17

top

A. The Organization's Statement of Issue No. 17 Does Article IV, Section 5 - Duplicate Time Payments allow a carrier to only apply general wage increases on eight hours of a nine-hour and twenty-minute minimum assignment provision?

B. The Carriers' Statement of Issue No. 17 Is the un-worked portion of the one hour and twenty minute overtime guarantee, provided under Rule 35, Minimum Assignments, an arbitrary allowance, as contemplated in Article IV, Section 5 of the 1986 National Agreement?

Pertinent Contract Provisions

ARTICLE IV - PAY RULES

Section 5 - Duplicate Time Payments

(a) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, shall not apply to employees whose seniority in engine or train service is established on or after November 1, 1985.

(b) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, not eliminated by this Agreement shall not be subject to general, cost-of-living or other forms or wage increases.

Discussion

Schedule Rule 35 entitled "Minimum Assignments" on the Duluth, Mesabe and Iron Range Railroad (DM&IR) reads:

All crews working in Proctor-Duluth Terminal Service, Ore Dock Service and Outside Terminal Yard Service will be worked on a 9 hour and 20 minute assignment. The daily minimum shall include the 8 hour basic day

plus 1 hour and 20 minutes at overtime rates.

The organization argues that the nine hour and twenty minute assignments in Rule 35 are guarantees directly tied to the basic rate of the specified assignments as opposed to arbitraries or duplicate time payments. The guaranteed earnings, the Organization asserts, are exclusively derived from the regular assignments and thus, subject to post 1985 wage increases.

The Carriers submit that any Rule 35 compensation covering time which an engineer does not actually perform service is a duplicate time payment frozen at the June 30, 1986 pay rates and eliminated for new hires. The DM&IR related that, under the schedule agreement, eight hours or less constitutes a day in yard service. Therefore, the DM&IR concludes that any portion of the one hour and twenty minutes (beyond eight hours) not actually worked by an engineer is truly an arbitrary allowance. Of course, the DM&IR assures us that if an engineer works more than eight hours, he receives compensation at the current overtime pay rates for time worked in excess of eight hours.

Rule 35 of the DM&IR schedule agreement does not require engineers working in the specified services to actually work nine hours and twenty minutes. Indeed, many of the involved engineers worked fewer than eight hours. The DM&IR brought forward reliable documentary evidence showing that engineers frequently work less than nine hours and twenty minutes.(1) For example, between 1982 and 1987, the average time on duty for the Steelton

(1)The DM&IR incorporated into the record accounting documents compiled from conductors' timeslips showing time on duty from 1982 through 1989 for crews on assignments covered by Rule 35.

Switch Engine fluctuated over a wide range from 4.61 hours to 10.41 hours. The DM&IR demonstrated a consistent, well-entrenched practice of releasing engineers once their work was performed even if it was well before the elapse of nine hours and twenty minutes. Rule 35 has been historically treated as a minimum payment expressed in terms of "time" wholly unrelated to either required time on duty or time worked. Article IV, Sections 5(a) and 5(b) apply to arbitrary allowances expressed according to "time" (as well as two other measurements). Thus, to the extent that engineers do not work nine hours and twenty minutes, any portion of the one hour and twenty minute payment in excess of a basic yard day covering time not worked constitutes a duplicate time payment within the meaning of Article IV, Sections 5(a) and 5(b) of the 1986 Arbitrated National Agreement.

A. Answer to the Organization's Statement of Issue No. 17: Yes, provided the answer is restricted to Rule 35 in the BLE Schedule Agreement on the Duluth, Mesabe and Iron Range Railroad.

B. Answer to the Carriers' Statement of Issue No. 17: Yes.

Dated: May 1, 1990

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 18

top

A. Is Canalport Yard within the C&NW Chicago Terminal?

B. Is Wood Street Yard within the C&NW Chicago Terminal?

C. Are the provisions of pre-existing agreements which prohibited road crews from handling trains within the C&NW Chicago Terminal superseded by Article VIII, Section 1(a) of the May 19, 1986 Arbitrated National Agreement?

Pertinent Contract Provisions

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK

Section 1 - Road Crews Road crews may perform the following work in connection with their own trains without additional compensation:

(a) Get or leave their train at any location within the initial and final terminals and handle their own switches. When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty point fixed for that assignment and such point is not within reasonable walking distance of the on and off duty point, transportation will be provided.

Discussion

A. Canalport Yard, formerly a Conrail yard, is an industrial facility maintained by Union Pacific Freight Services, a C&NW customer, located on the south side of Chicago off Carrier trackage.

As part of its adjudication of a dispute over whether hostlers could deliver power from C&NW's Proviso Yard to Canalport, the National Railroad Adjustment Board, First Division, in Award No..23885 (Fletcher), authoritatively and recently held that Canalport Yard was outside the C&NW Chicago Freight Terminal. While this. Committee questions some of the Board's justifications for its factual finding, we endorse the Board's conclusion that the C&NW's primary argument was unsupported by any agreement provision. The C&NW contended both before the First Division and this Committee that Canalport Yard must be inside its Chicago Terminal since the facility is located north of Irondale, the southernmost C&NW yard which is also accessible only by running over foreign tracks. Distinguishing Irondale from Canalport, the Board, in Award No. 23885, wrote: "...Irondale is not denoted, by Agreement language of any type, as a geographic boundary of any type Irondale, which is unique from other Carrier Yards in the Chicago area, is simply included within the switching limits established by the Agreement." Canalport Yard is neither a Carrier facility listed in the applicable Agreement nor is it located within the geographic boundaries of the terminal as expressed in the applicable Agreement. Since the location of Irondale is unrelated to the limits of the Chicago Terminal, this Committee cannot extrapolate to expand the terminal boundaries to encompass Canalport Yard. The C&NW has not come forward with convincing evidence or arguments that Award No. 23885 was palpably erroneous. Therefore, under the doctrine of res judicata, this Committee rules that the issue of whether or not Canalport Yard is within the Chicago Freight Terminal has been fully and finally resolved on this property by Award No. 23885.

B. The parties agree that Wood Street Yard (Global I) is a C&NW yard within the C&NW Chicago Freight Terminal.

C. Beginning in 1905, the Chicago Freight Terminal comprised a distinct seniority district. Road districts ended, for all practical purposes, at the entryways to the Chicago Terminal since, through the years, the parties negotiated rules severely restricting the capacity of road crews to operate their trains within the terminal boundary.(2) Rule II(a) of the 1955 Schedule Agreement, a definite terminal provision, designates Proviso, located in the far western part of the Chicago Freight Terminal, as the tying up point for road engineers on the Galena, now Eastern, Division Seniority District. Probably the most restrictive provision is found in paragraph 2 of the March 29, 1961 Agreement which states:

So long as revised Supplemental Memorandum Agreement No. 2 referred to in paragraph 1 hereof continues in effect, the railway company will terminate Galena Division through freight crews in either assigned or unassigned service at Proviso instead of operating such crews through to Wood Street or 40th Street, except stock or coal trains destined to U.S. Yards or 40th Street.

In 1968, the C&NW merged with the Chicago Great Western Railroad (CGW). The first paragraph of Article 7(e) of the July 26, 1968 C&NW-CGW Merger Agreement reads:

> When road crews operate from or to any consolidated terminal or switching limits, such crews may set out inbound and/or pick up outbound at any yard or point within such consolidated terminal and within such consolidated switching limits. It is also recognized that employees in road service may be required to originate or terminate trains at any point within terminals and switching limits which are consolidated and/or extended pursuant to this Article and that employees in road service and yard service may be required.
>
> (2) In addition, Chicago Terminal engineers hold only yard (their district) seniority while Eastern Division engineers lack yard seniority to go on and off duty at any designated point within terminals and switching limits which are consolidated and/or extended pursuant to this Article and the attachments hereto. NOTE: In the application of Article 7(e), the company will designate the point or points within a terminal where crews will go on and off duty. This may vary for different pools or assignments and such designations will be subject to change by the company. However, the point where a crew reports on duty on an outbound trip from a terminal will be the point at which the crew goes off duty on returning inbound trip. It is understood that yard crews will go off duty at the same point they go on duty. (Emphasis added.)

Article 7(a) lists Chicago among the terminals consolidated as a result of the merger.

Subsequent to the merger, the Carrier began operating through freight trains from Clinton, Iowa, the western terminus of the Eastern Seniority District, through Proviso to Wood Street. However, in Award No. 65, the Special Board of Adjustment (Abernethy), established by the June 25, 1969 Memorandum of Agreement, ruled that, for merger (lifetime) protected employees, Article 7(e) of the Merger Agreement did not supersede the definite terminal rules and other pre-existing agreements, including the March 29,1961 Agreement. Award No. 65 effectively forced the Carrier to revert back to operating the Chicago Terminal subject to the pre-merger restrictions on work road crews could perform within the Chicago Terminal. In 1973 and again in 1975, the Carrier and the Organization entered into Memorandum Agreements allowing the Carrier to operate trains with road crews from Wood Street through Proviso to Clinton provided the service did not cause the reduction of any terminal transfer assignments. Due to Award No. 65 and the continued presence of merger protected employees, the Carrier never operated Chicago as a consolidated terminal until the effective date of the 1986 Arbitrated National Agreement.

Relying on the historical development of Chicago Terminal operations, the Organization asserts that Article VIII, Section l(a) of the 1986 Arbitrated National Agreement does not permit Eastern Division road crews to operate beyond Proviso because, by doing so, the road crews impermissibly invade a separate and distinct seniority district. Furthermore, the Organization emphasizes that permitting road crews to take their trains to and from Wood Street is tantamount to assigning intra-terminal transfer service to road crews.

On the other hand, the C&NW contends that the 1968 CGW Merger Agreement established the Chicago Freight Terminal as a consolidated terminal for road crews on the surrounding seniority districts to the extent specified in the Agreement. The Carrier stresses that it observed the pre-1968 limitations on operating road crews to and from Wood Street only because Award No. 65 held that the restrictions survived the merger for merger protected employees.

In this Committee's view, the C&NW advances the more logical position consistent with not only the concept of a merger consolidated terminal but also with the relaxation of restrictions on road crews performing work associated with their own trains in yards contained in Article VIII, Section 1 of the 1986 Arbitrated National Agreement.

Without doubt the Chicago Freight Terminal is a consolidated terminal. The 1968 Merger Agreement unequivocally created a consolidated terminal and specifically stated that road crews could originate or terminate their trains anywhere within the terminal. The primary purpose of a consolidated terminal is to eliminate definite or immovable on and off duty points within the terminal switching limits. Terminals are often consolidated as part of railway mergers. [See also Public Law Board No. 4264, Award No. 12 (Sitting with this

Referee).] Nevertheless, the C&NW could not immediately avail itself of this operational flexibility due to Award No. 65. Thus, the C&NW had no choice but to enter into special agreements with the Organization allowing the Carrier to operate a few trains from Wood Street through Proviso to road territory. Article VIII, Section 1(a) of the 1986 Arbitrated National Agreement lifted any previous restrictions on road crews getting or leaving their own trains within terminals. Since the Chicago Freight Terminal is a consolidated terminal pursuant to the 1968 Merger Agreement, the Eastern Division road crews can get or leave their trains at Wood Street or at any other yard within the Chicago Freight Terminal.

Our resolution of this issue should not be construed to consolidate road and yard seniority. Also, our decision does not permit the Carrier to assign road crews to perform yard service. When road crews get or leave their trains at a yard within the consolidated terminal, they are not performing transfer service because the road crews are doing work solely related to their road train.

Answer to Issue No. 18A: No.

Answer to Issue No. 18B: Yes.

Answer to Issue No. 18C: Yes. Article VIII, Section 1(a) supersedes prior restrictions by allowing road crews to get or leave their road train at any location within the C&NW Chicago Freight Terminal.

Dated: May 1, 1990

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 19

top

A. The Organization's Statement of Issue No. 19

Can a Carrier unilaterally eliminate a schedule rule which required preparatory time under Section 3 of Article VIII?

B. The Carriers' Statement of Issue No. 19

Does Issue 13 previously arbitrated before this Committee require payment of preparatory time under Rule 1s of the Union Pacific Schedule Agreement?

Pertinent Contract Provisions

ARTICLE VIII - ROAD, YARD, AND INCIDENTAL WORK

Section 3 - Incidental Work Road and yard employees in engine service and qualified ground service employees may perform the following items of work in connection with their own assignments without additional compensation:

(a) Handle switches

(b) Move, turn, spot and fuel locomotives

(c) Supply locomotives except for heavy equipment and supplies generally placed on

locomotives by employees of other crafts

(d) Inspect locomotives

(e) Start or shutdown locomotives

(f) Make head-end air tests

(g) Prepare reports while under pay

(h) Use communication devices; copy and handle train orders, clearances and/or other messages.

(i) Any duties formerly performed by firemen.

Discussion

Agreed upon Question and Answer No. 2 under Article VII, Section 3 of the 1986 Arbitrated National Agreement states:

> Q-2: An existing rule provides for a preparatory time arbitrary payment to engineers and firemen for each tour of duty worked 'for all services in care, preparation and inspection of locomotives, including the making out of necessary reports required by law and the company and being on their locomotive at the starting time of their assignments.' Does Section 3 of Article VIII contemplate the elimination of such an arbitrary?
>
> A-2: No, if the engine service employees are required to report for duty in advance of the starting time of the assignment.

The first paragraph of Article 15(a) of the October 1, 1977 BLE Schedule Agreement in effect on the former Missouri Pacific Railroad provides:

> Engineers in yard service will be paid the current rates according to class of engine; eight hours or less shall constitute a day's work. Except where engine crews are relieving each other on the same engine in continuous service, enginemen will report 15 minutes prior to time for the crew to begin work and be paid therefore; if required to report more than 15 minutes in advance of the starting time, actual time will be allowed.

Article 15(a) is similar to the schedule rule in effect on the former Wabash (N&W) which we addressed in Issue No. 13.

In Issue No. 13, this Committee observed: "The N&W is bootstrapping the Schedule Rules when it first eliminates the requirement that engineers report in advance of their starting time and justifies its denigration of the preparatory time payment because the engineer does not report to duty ten or twenty minutes before his starting time. We further iterated that agreed upon Question and Answer No. 2 would be "...rendered completely meaningless and superfluous..." because the Answer would not preserve any preparatory time payments if a carrier could unilaterally cancel the schedule rule mandating preparatory time and then invoke Article VIII, Section 3 to avoid paying preparatory time compensation.

The UP argues that Article 15(a) has always been recognized as an arbitrary payment specially granted to yard engineers separate and apart from their assignments. However, the March 21, 1988 bulletin from the Superintendent of Transportation Service at North Little Rock directing yard engineers to stop reporting for duty fifteen minutes before their call time belies the UP's assertion that engineers rarely, if at all, reported to work before the rest of the members of the switch crews. The bulletin unmistakably implies that engineers were previously reporting to duty in advance of their starting times and inspecting their locomotives per Article 15(a). Even when an engineer did not actually report to work fifteen minutes ahead of time to avoid expiring (before the remainder of the crew) under the Hours of Service law, the engineer was constructively treated as

if he had reported to work ahead of the starting time of the yard assignment. Also, the Organization presented evidence of claims filed for time spent preparing engines for service by engineers at Little Rock and St. Louis which indicates that the preparatory time compensation in Article 15(a) is pay for time worked. Thus, the UP is contractually bound to call a yard engineer to duty fifteen minutes before the rest of the switch crew begins work absent circumstances constituting an exception as stated in the rule.

For the reasons more fully set forth in Issue No. 13, Article VIII, Section 3 did not affect the Article 15(a) preparatory time payments.

A. Answer to the Organization's Statement of Issue No. 19: No, unless the schedule rule does not require engine service employees to report to duty in advance of the starting time of the assignment.

B. Answer to the Carriers' Statement of Issue No. 19: Yes.

Dated: May 1, 1990

Larry D. McFather
Organization's Member

Charles I. Hopkins Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 20

top

A. The Organization's Statement of Issue No. 20 How shall the non-duplicate pay provision of Article 26(d) of the BLE-UP (former Missouri-Pacific) Agreement which expresses payment in miles, be interpreted with respect to changes in basic day miles pursuant to Section 2?

B. The Carriers' Statement of Issue No. 20

Does Question and Answer No. 4 under Article IV of the agreed upon Question and Answers between the BLE and the NRLC apply to the Union Pacific rule concerning runaround payments?

Pertinent Contract Provision

ARTICLE IV - PAY RULES

Section 2 - Miles in Basic Day and Overtime Divisor

(a) The miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed as provided below:

	Through Freight Service		**Through Passenger Service**	
Effective Date of Change	**Miles in Basic Day**	**Overtime Divisor**	**Miles in Basic Day**	**Divisor Overtime**
July 1, 1986	104	13.0	104	20.8
July 1, 1987	106	13.25	106	21.2
June 30, 1988	108	13.5	108	21.6

Discussion

The first two sentences of Article 26(d) of the BLE-Missouri Pacific Schedule Agreement read:

> Chain gang engineers will be run "first in, first out" of terminals. Available chain gang engineers runaround by engineers of their own territory or those of others, will be allowed fifty (50) miles. (Emphasis added.]

Agreed upon Question and Answer No. 4 under Article IV, Section 2 of the 1986 Arbitrated National Agreement states:

> Q-4: How shall non-duplicate time payments expressed in miles be paid following changes in miles in basic day pursuant to Section 2? (e.g., 50 miles runaround rule.)
>
> A-4: Where the obvious intent of the parties was to apply a percentage of a basic day (e.g., 50 miles equals 50%), such intent shall be continued (50% equals 52, 53 or 54 miles depending on effective date of change.)

The Organization argues that the 50 miles in Article 26(d) was proportionally indexed to incorporate incremental increases in the mileage comprending a basic day. The parties, the Organization asserts, manifested their intent that the runaround payment would be a constant percentage (50%) of the prevailing basic day miles per agreed upon Question and Answer No. 4. The Organization explains that Article 26(d) expresses the payment in miles merely because 100 miles had constituted a day for decades before July 1, 1986.

The UP characterizes Article 26(d) as a punitive rule bearing no relationship to the runaround engineer's lost earnings. Thus, according to the UP, the 50 miles expressed in Article 26(d) is a fixed payment as opposed to one half of the basic day. The UP contends that there is, no evidence in the record showing the parties obviously intended to apply a percentage of the basic day when computing penalty payments under Article 26(d). The UP cited other schedule rules, such as Article 7(a) (Called and Held Waiting) where the parties obviously evinced their intent to index the payment to a portion of the basic day by expressing the penalty payment as "...1/2 day at daily rate of one hundred (100) miles."

The resolution of this dispute is controlled by the agreed upon Answer to Question No. 4 under Article IV, Section 2(a) of the Arbitrated National Agreement. The example in the Answer, a runaround non-duplicate time payment, is the exact type of payment contained in Article 26(d). The runaround rule was negotiated when the one hundred mile basic day remained constant. Although the parties could have expressed the payment in terms of a fraction of the basic day, it was unnecessary to state "1/2 of the basic day" because 100 miles consistently comprended the basic day for a long period of time. The descriptive phrase "obvious intent" in agreed upon Answer to Question No. 4 includes ascertaining the parties intent from the patent language of the rule, historical practices and other evidence mirroring the relationship between the amount of the payment and a basic day. The absence of the word "day" in Article 26(d) does not mean that the parties intended for the payment to be forever fixed at exactly 50 miles. Question and Answer No. 4 was designed to prevent such an unreasonable result and the example given in the agreed upon Question and Answer corresponds precisely to the Article 26(d) runaround payment. In this particular case, the parties obviously chose 50 miles so the payment would constitute 50% of the basic day.

> A. Answer to the Organization's Statement of Issue No. 20: The UP must maintain a 2:1 ratio of miles comprising the basic day to miles paid under Article 26(d). For instance, if the basic day is 108 miles, the non-duplicate time payment due an engineer runaround under Article 26(d) is 54 miles.
>
> B. Answer to the Carriers' Statement of Issue No. 20: Yes

Dated: May 1, 1990

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ISSUE NO. 21
top

Do the provisions of Article VIII, Section 2, Yard Crews, (a)(iii) permit carrier to supplant road switching outside of the yard switching limits with the service of a yard engine crew?

Pertinent Contract Provisions

ARTICLE VIII - ROAD, YARD AND INCIDENTAL WORK

Section 2 - Yard Crews

> (a) Yard crews may perform the following work outside of switching limits without additional compensation except as provided below:
>
> *****
>
> (iii) Perform service to customers up to 20 miles outside the switching limits provided such service does not result in the elimination of a road crew or crews in the territory. The use of a yard crew in accordance with this paragraph will not be construed as giving yard crews exclusive rights to such work. This paragraph does not contemplate the use of yard crews to perform work train or wrecking service outside switching limits.

Discussion

This issue was presented to this Committee within the context of four situations which developed on the Chicago and Northwestern Transportation Company. Before we address these occurrences, this Committee must interpret Article VIII, Section 2(a)(iii) and especially the rule's reference to the exclusivity principle. According to the Organization, the second sentence of Article VIII, Section 2(a)(iii) prohibits the Carrier from regularly assigning yard crews to work outside switching limits (not more than twenty miles) when such work was previously performed by road crews. The Organization relies heavily on the March 20, 1987 Award of the UTU Joint Interpretation Committee involving an identical provision in Article VIII, Section 1(c) of the October 31, 1985 UTU National Agreement. Arbitrators Kasher and Peterson wrote that the contract provision permits a switch engine to service customers within the twenty mile road/yard zone, ...on but a limited or incidental basis...."

We concur with the UTU Joint Interpretation Committee's construction of the language which appears in Article VIII, Section 2(a)(iii) of the 1986 Arbitrated National Agreement but this Committee emphasizes that the logic of the UTU Committee's interpretation is derived from the first sentence of Article VIII, Section 2(a)(iii) rather than the allusion to the exclusivity concept in the next sentence. The sole criterion to determine if a yard engine may perform switching service to customers in road territory (up to 20 miles outside switching limits) is whether or not the assignment of such work results in the elimination of a road assignment somewhere on the territory. Arbitrators Kasher and Peterson noted that assigning a yard crew to perform a great preponderance of work outside switching limits would probably lead to the elimination of a road crew. However, neither the reference to incidental work in the UTU Award nor the exclusivity language in Article VIII, Section 2(a)(iii) bars the Carrier from regularly assigning some or even the same road work to a yard engineer. The second sentence of Article VIII, Section 2(a) was fashioned to prevent a yard engineer from claiming exclusive rights to perform work in the twenty mile road-yard zone simply because the yard engineer was indefinitely assigned to perform switching at a particular industry located less than twenty miles outside switching limits. Instead, such work continues to be classified as road work. The Carrier attained the flexibility to assign the work of servicing customers within the twenty mile parameter to either road or yard crews so long as no road crew was abolished. Aside from this single proviso, there is no limit on the quantity of work yard crews may perform

up to twenty miles outside switching limits.

Therefore, in resolving each of the four situations on the C&NW, the standard for determining if the C&NW has breached Article VIII, Section 2(a)(iii) is whether or not the assignment of work, consisting of switching at customers, to a yard crew caused the elimination of one or more road crews on the applicable territory as opposed to whether or not a yard crew is regularly performing such work within twenty miles of switching limits.

1. The Kaukana Dispute. For some time, the Carrier operated two road switchers out of Appleton, Wisconsin. Due to a strike at the Combined Lock Paper Mill, the Carrier discontinued one road switch run from Appleton to the paper mill. Apparently the second road switcher assignment began servicing the other industries previously part of the abolished switcher's assignment. When the strike ended, the Carrier operated the Kaukana Yard Engine service Combined Lock Paper Mills.(3) The Carrier did not reestablish the Appleton switch run to the paper mill.

The immediate cause of the abolition of the road switcher run was the work stoppage at the paper mill. However, the permanent discontinuance of the Appleton road switcher was the assignment of switching at the paper mill after the strike to the Kaukana Yard Engine. In lieu of reestablishing the assignment at the conclusion of the strike, the Carrier assigned the work to the Kaukana yard engine. The road assignment abolition was directly related to the assignment of mill switching to the Kaukana Yard Engine. Put differently, the C&NW used a transitory work stoppage as a pretext for permanently abolishing a road crew.

While the C&NW violated Article VIII, Section 2(a)(iii), the record reflects that the dispute was rendered moot as of December, 1988 when the Carrier sold the rail line to the Fox River Valley Railroad.

2. The Waukeaan Dispute. Prior to November, 1986, the Carrier operated two way freight trains, WWE32 and WWE33, out of Waukegan, Illinois. Both trains traveled south to Lake Bluff and then across to Tower KO on the New Line. During this part of its trip, WWE33 performed switching at North Chicago (less than twenty miles outside Waukegan switching limits). At the tower, the WWE32 went north on the New -Line to Bain while WWE33 traveled south servicing customers on the New Line down to Skokie. On November.

(3) As an ancillary argument, the Organization also charges that the engine operated off its seniority district, the Carrier abolished the WWE33. Since both way freights worked only about four to six hours per day, the Carrier placed all of the WWE33's work, including the North Chicago switching work, on the WWE32 assignment. As a result, the WWE32 worked almost a twelve hour assignment. During February, 1987, the Carrier reassigned the North Chicago switching work from the WWE32 to yard engine job 01 working out of Waukegan. The Carrier made the reassignment because, except for approximately two days per week when it services a power plant, the yard assignment consistently worked less than eight hours. Thus, on most days, the North Chicago switching filled out a day's work for the yard crew.

This Committee remands this dispute to the property for additional discussion and evidence. If the Carrier used the transitory assignment of the North Chicago switching work to the remaining way freight as a subterfuge for eventually placing the work with a yard assignment, then it violated Article VIII, Section 2(a)(iii) because the C&NW could not have eliminated one way freight assignment unless it ultimately assigned the North Chicago switching work to the Waukegan yard engine. On the other hand, if the assignment to the yard engine was made in good faith simply to avoid paying unnecessary overtime to a road crew (see the Kenosha Dispute) then the elimination of the way freight was not directly traceable to the assignment of North Chicago switching work to the Waukegan yard engine. Should the parties be unable to resolve this factual conflict on the property, they may supplement this record and return to the Informal Disputes Committee for a final and binding decision.

3. The Kenosha Dispute. In the past, road assignment WWE19 performed switching work at Racine. The Carrier reassigned the Racine switching work to one of three switch engines stationed at Kenosha, nine miles away. According to the Organization, the reassignment resulted in a reduction in overtime compensation earned by the road crew.

As enunciated above, the sole criterion to determine if a carrier has impermissibly assigned road work within the twenty mile road-yard service zone to a yard engine is whether or not the assignment leads to the

elimination of a road assignment on the applicable territory. Article VIII, Section 2(a)(iii) does not prohibit the assignment of a yard engine to perform road switching within twenty miles of the yard engine's switching limits even if a road crew that formerly accomplished this switching work no longer earns overtime compensation on a regular basis. One of the purposes of Article VIII, Section 2(a)(iii) was to generate greater operational efficiencies by allowing a carrier to fill out a short yard day with some work of an overburdened road crew.

4. The Wausau Dispute. When the Carrier employs two yard engine crews at Wausau, one assignment has sufficient time within an eight hour day to handle some yard work plus industrial switching at Rothschild, which is five track miles outside the Wausau switching limits. If only a single Wausau yard crew is employed, it works close to twelve hours to accomplish yard work and so, the Green Bay to Wausau road freight crew handles the Rothschild switching. By bulletin dated January 19, 1989, the Assistant Trainmaster assigned the Rothschild switching work to one of the Wausau yard engines unless or until the agent issues instructions to the contrary.

Even if the Wausau yard engine is regularly performing Rothschild switching work, the Carrier has not violated Article VIII, Section 2(a)(iii) because the assignment did not result in the elimination of a road crew. At most, the road crew loses an opportunity to perform overtime compensation which is a permissible consequence of the application of Article VIII, Section 2(a)(iii).

Answer to Issue No. 21: Yes, unless the yard crew's servicing of customers up to twenty miles outside the switching limits results in the elimination of one or more road crews on the territory.

Dated: May 1, 1990

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

Brotherhood of Locomotive Engineers
STANDARD BUILDING
CLEVELAND. OHIO 44113-1702

TELEPHONE: 216/241-2630
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RONALD P. MCLAUGHLIN
International President

October 4, 1993

ALL U.S. GENERAL CHAIRMEN

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Re: Informal Disputes Committee

Dear Sirs and Brothers:

Enclosed is a copy of Informal Disputes Committee Issue No. 22, Dated April 2, 1993. It should be noted that Mr. C. I. Hopkins, Jr., Chairman - National Railway Labor Conference, just signed this decision and, in fact, attached a "Separate Opinion" regarding this dispute.

After reading the decision and the "Separate Opinion", it will become clear to you why the International Division felt it was necessary to dissolve the Informal Disputes Committee created under Article XVI of Arbitration Award No. 458. As previously indicated, it is requested that all disputes concerning Arbitration Award No. 458 be scheduled for resolution before the First

Division with the International Division being given the courtesy of making comments regarding your submission. It is hoped that this information and material will be beneficial to you.

Fraternally yours,

President

Enc.

cc & enc. - Advisory Board.

ISSUE NO. 22

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A. The Organizations' Statement of Issue No. 22 Is Article IX - Interdivisional Service, applicable to turnaround service which works from a home terminal to an away-from-home terminal back to the home terminal under local schedule rules?

B. The Carriers' Statement of Issue No. 22

1. Does CSXT have the right to establish interdivisional service between Huntington and Peach Creek, West Virginia, on a turnaround basis?

2. Does CSXT have the right to establish interdivisional service from Huntington through Peach Creek to locations in the coal fields on a turnaround basis?

3. If either or both of the above questions are answered in the affirmative, is the appropriate method of compensation that contained in Article IX of Award of Arbitration Board No. 458?

Pertinent Contract Provisions

ARTICLE IX - INTERDIVISIONAL SERVICE

Section 1- Notice An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service. Section 2 - Conditions. Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provisions.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

NOTE: Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

(d) On runs established hereunder crews will be allowed a $4.15 meal allowance after 4 hours

at the away from home terminal and another $4.15 allowance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowanced of $1.50 for the trip.

(f) The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work.

Discussion.

This issue arose on the property of the CSX Transportation Inc. For many years, CSX and one of its predecessor railroads operated turnaround service between Huntington, West Virginia, a home terminal and Peach Creek, West Virginia, an intermediate point Charles I. Hopkins, Jr. (1) Rule 12 of the applicable agreement provides that in

"...through freight service a turnaround run is a run from one terminal to an intermediate point and return to terminal...".

Rule 94 specifies that engineers will be compensated 100 miles for operating from .' Peach Creek is often referred to as Logan. The two town names can be used interchangeably. Huntington to Peach Creek or in the opposite direction. Presently, the Carrier pays an engineer making the Huntington - Peach Creek - Huntington trip 100 miles for each segment of the turnaround trip although the actual distance between the two points is 75 miles.

On February 20, 1987, and again on June 7, 1991, CSX served notice on the Organization of its intent to institute "...interdivisional assigned and/or pool turnaround freight service to operate Huntington, West Virginia through the terminal of Peach Creek, West Virginia returning to Huntington, West Virginia." (2) While the literal language of the notices indicate that CSX's intent was to convert the existing turnaround service into intraseniority district and/or intradivisional service without any operational changes, CSX subsequently explained that it actually wanted the right to operate trains through Peach Creek to points south and east of Peach Creek and then back through Peach Creek and tying up in Huntington. Stated differently, the new turnaround point would be a location beyond Peach Creek. (3) Assuming the CSX contemplates operating new interdivisional turnaround service to stations, terminals or mines beyond Peach Creek (where Peach Creek is no longer the turnaround point), CSX's notice falls within the purview of Article IX of the 1986 Arbitrated Agreement. The genesis and evolution of Article IX demonstrate that the intent of the provision was to permit the Carrier to introduce interdivisional, interseniority, and intradivisional intraseniority district service where they did not have the right to operate such service under existing rules in the schedule agreements. Thus, based on its subsequent explanation following the written notices, CSX was legitimately trying to reap the efficiencies that may flow from a

(2) The quotation is from the June 7,1991 notice.

(3) Trains running between Peach Creek and Huntington traverse the Kanawha Subdivision. Trains operating east of Peach Creek are on the Logan Subdivision new turnaround service which will cross existing subdivisions and run through the present turnaround point (Peach Creek). Therefore, the Organization is required to comply with the negotiation and, if necessary, arbitration procedures of Article IX to determine the conditions under which this service will operate. To the extent the CSX's notices contemplates relabeling the existing Huntington - Peach Creek - Huntington turnaround service as new intraseniority or intradivisional service, CSX's notices fall outside the scope of Article IX. A carrier may not simply transform an existing, non-interdivisional run into an Article IX operation. The negotiating history of Article IX and Article VII of the May 13, 1971 National Agreement shows that the parties intended for Article IX to give carriers the right, under certain conditions, to operate trains without crew changes on territories or through terminals where carriers were currently prohibited from doing so. Here, CSX has always been able to operate the Huntington to Peach

Creek turnaround service. If this service could simply be converted to an Article IX run by the mere filing of a notice (without any operational changes), any carrier could take any existing basic day trip and transform the service to Article IX service to avail itself, for example, of the benefits of Article IX Section 2(e) to evade a local rule vesting engineers with a fixed meal period. CSX failed to cite any case where Article IX was applied to an existing, pure turnaround run between a home terminal and an intermediate point. The parties are always free to negotiate over changing how this turnaround assignment is operated but such negotiations are not mandated by Article IX. (4)

(4) The UTU apparently entered into agreement changing the operation of the existing turnaround service. This Committee notes that the parties decided on a compensation arrangement different from that set forth in Article IX, Section 2(b). The fact that UTU entered into agreement with CSX to change existing service does not mean such agreement was mandated by the interdivisional service provisions in the 1985 UTU National Agreement. Nonetheless, although this Committee concludes that Article IX is inapplicable to the pure turnaround assignment presently existing between Huntington and Peach Creek, we emphasize that our decision is restricted to the facts of this record. There are many types of turnaround service, including among others, a loop turnaround trip and multiple turnarounds through a home terminal. Whether Article IX is applicable to any other types of turnaround service must be decided on a case by case basis.

A. Answer to the Organization's Statement of Issue No. 22: No, provided the answer is restricted to the particular facts of this case.

B. Answer to the Carriers First Question under Issue No 22: No, provided the answer is restricted to the particular facts of this case.

C. Answer to the Carriers' Second Question under Issue No. 2: Yes.

D. Answer to the Carriers' Third Question under Issue No. 2: Yes.

Dated: April 2, 1993

Ronald P. McLaughlin
Organizations' Member

Charles Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

Separate Opinion

This is in the nature of a dissent because I think a mistake led to an erroneous decision. However, a dissent would not change the result and the neutral member of the Board afforded the parties a proper opportunity to present their respective positions. However, perhaps because of simultaneous written submissions and a somewhat misdirected oral presentation by the undersigned the key point was, I believe, misperceived. That key point was the denomination of the service in question as "turnaround service." The BLE submission represented it as turnaround service and I believe the neutral member accepted and appropriated that as factual. However, that is not correct. The service is not turnaround but straightaway service. This is made clear by the agreement rule 94 that lists the services to which it applies. These services are listed individually and those that are straightaway show the originating, away-from-home and destination terminal: whereas those that are turnaround show the origin terminal, turnaround point "and return." The turnaround runs are paid on a continuous time and mileage basis and the straightaway runs are paid on a mileage or minimum day basis in each direction - that is why the service in question is paid 100 miles in each direction even though the distance is 75 miles. The away-from-home terminal is a layover and crew change point which, of course, is not the case in turnaround service. The list of covered services as set forth in Rule 94 is reproduced below:

B. Freight Miles

PENINSULA DISTRICT:

Fulton and Old Point Junction 100

RIVANNA DISTRICT:

Fulton and Gladstone 122

PIEDMONT - WASHINGTON DISTRICT:

Fulton and Charlottesville 100
Fulton and Gordonsville and return 154
Charlottesville and Potomac Yard 110
Charlottesville and Strathmore 100
Strathmore and Potomac Yard 124

MOUNTAIN DISTRICT:

Charlottesville and Clifton Foree 100
Clifton Foree and Basic 100

JAMES RIVER DISTRICT:

Gladstone and Clifton Forge 112
Clifton Foree and Lynchbure 100

HINTON DISTRICT:

Clifton Foree and Hinton 100
Hinton and Handley 100
Hinton and Russell (manifest and I/D trains only) 167
Hinton and Raleieh and return 100

HUNTINGTON DISTRICT:

Handley and Russell 100
Russell and Cane fork 100
Handley and Huntington 100
Chelyan and Huntington 100
Chelyan and Russell 100
Huntington and Lewis and return 100
Russell and Whitesville 108
Russell and Danville 100
Handley and Whitesville 100
Handlev and Danville 100
Russell and Logan 100
Huntineton and Loean 100
Handley and Logan 130

CINCINNATI - NORTHERN DISTRICT:

Russell and Cincinnati 143
Russell and.Parsons 113

BIG SANDY DISTRICT:

Russell and Martin 100
Russell and Shelby 124
Russell and Paintsville 100
Russell and Pikesville ..... 115.

Note - Through freight engineers. Russell to Paintsville, relieved at Paintsville. whether under the Hours Service Law or not will be paid on the basis of a minimum day for the trip in each direction and are considered on duty and under pay at the expiration of 8 hours rest period from the time relieved, unless 10 hours rest is required by law.

LEXINGTON - LOUISVILLE DISTRICT:

Russell and Winchester (Patio).....110
Russell and Midland and return 146
Russell and Mt. Sterline and return..... 190
Lexington and Louisville 100

CINCINNATI - CHICAGO DISTRICT:

Peru and Cincinnati 162
Peru and Chicago 124

(Emphasis Added)

The reason for this separate opinion is to try to clear the record but most importantly to reinforce that part of the neutral member's decision that emphasizes it is not to be a precedent for other situations: "... we emphasize that our decision is restricted to the facts of this record."

Charles I. Hopkins, Jr.
Carriers' Member.

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