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Public Law Board No. 6849

Parties to Dispute

United Transportation Union	)	
	)	Case 9/Award 9
	)	
Burlington Northern and Santa	)	
Fe Railway Company	)	

Statement of Claim

Claim one basic day account being mishandled when being instructed to leave train at Somerville and ride another train to Davidson, Texas to protect hours of service train to Temple, Texas.

Background

A claim was filed on September 9, 1998 on behalf of conductor C. L. Wickliffe. Remedy of one basic day was requested in view of the Claimant allegedly being mishandled as stated in the Statement of Claim. After the claim's denial it was properly handled on property by the parties and then docketed before this Board for final and binding adjudication.

Discussion & Findings

At issue in this case is whether there was a violation of Appendix 11, Sections 7 and 13 of the Conductors and Trainmen's Agreement when the Claimant was requested to allegedly perform hours of service relief. The Carrier denied the claim and it was docketed before this Board for final and binding disposition.

This case is somewhat comparable to case No.3 already handled and ruled on by this Board because it deals with interdivisional service. In that earlier case the claim was

that there was a violation of Appendix 2 of the 1985 Agreement because the Claimant to that case was deadheaded before reaching the end terminal on his ID nm. In this case the allegation is that there was a violation of Appendix 11 of the Conductors and Trainmen's Agreement! because the Claimant started with one train at the terminal of origin which was brought it to an intermediate point, was then transported to a second train at another intermediate point, and then was instructed to bring the latter to its [mal destination.

The Claimant went on duty at Galveston on the date of September 7, 1998 to work on the Galveston to Temple, Texas interdivisional service pool. The Claimant operated train M CPSSVL 05A to an intermediate point between Galveston and Temple which was located at Somerville. The Claimant then got off this train and rode with another crew on another train from Somerville to Davidson The latter is a second intermediate point. At Davidson the Claimant along with other crew members then took control of this second train which was M SVLAMA 05 and took it to the final destination which was the terminal at Temple. The Claimant did this because he was advised to do so by the dispatcher. The second train at Davidson was an hours of service one from that point to Temple. The Claimant was paid for the full run from Galveston to Temple.

The issue here is whether this work assigned to the Claimant while he was on the interdivisional pool involved a violation of the labor agreement provisions cited in the claim. Those provisions are the following.

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<sup>1</sup> There is another agreement on this property called the Temple-Houston, Temple-Galveston III Agreement which has identical language as that cited in this case.

## Appendix 11

### Section 7

- a) When a crew in interdivisional service is tied up under the Hours-of-Service-Law or required to give up a train, such crew will be deadheaded promptly to destination.
- b) When a crew in interdivisional service is tied up under the Hours-of-Service-Law, an extra crew from the destination extra board will be used to handle train to destination.

### Section 13

Crews assigned in interdivisional service will not be used to perform non-interdivisional service.

Pertinent here is whether the Claimant was in interdivisional service on the day in question? There is no dispute over the answer to that question: he was.

Argument by the Carrier in denying the claim is that there is no Appendix 11 issue at stake here because it is immaterial why a train would be stopped on an interdivisional run even if it was stopped under the law. In other words, a member of the extra board would not have to be called if there was no reason to call one. Why? Because the Claimant was working his assignment on his interdivisional run and was able to bring the train from Davidson to Temple.

A review of the record on this case shows that the claim here is not one of first impression. According to the Carrier the members of the craft had been put on notice for over two decades before this claim was filed that the Carrier has other options besides bringing in employees from an extra board to bring a train to its final destination if there

are conductors available to do this on an interdivisional run. There is arbitral precedent cited in the record dealing with situations comparable to those involved in this case. Some of it is on point. Some not. Suffice it to cite Award 129 of PLB 5912 involving this Organization and the UP wherein the Board succinctly stated the issue that the Board must deal with here:

"The basic dispute between the parties is whether or not claimant performed Hours of Service relief on the date in question or whether he actually performed his regular service in interdivisional service..."

Although the facts in that earlier Award involve what is known as "dog catching" and are not exactly on point with the facts of the instant case, the Board's conclusion in that earlier Award is pertinent, in part at least, when it states that it is irrelevant "...to the resolution of this dispute... why (a) train... was sitting at...(a location)... waiting to be moved..."

The principle enunciated by this Board in Award No.3 is applicable here albeit the contract provisions cited by the Organization in filing that claim and this one are divergent. And this is that the Carrier has a right to keep crew members busy when they are on an interdivisional run if there is work to do absent contract constraints to the contrary. That is what happened here. It is irrelevant why the Carrier would want an interdivisional crew member to move a train as long as he is on assignment and being paid to do precisely that.

Likewise, if there is insufficient work it is not improper for the Carrier to deadhead

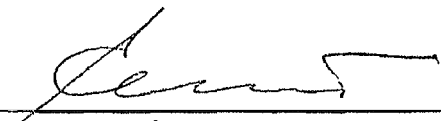
a member of the craft on an interdivisional run as long as the employee is being paid.

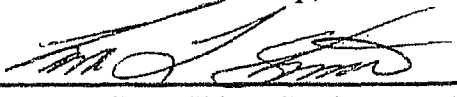
The Board can find nothing in the contract language provided to it by the parties to warrant any conclusion other than that cited in the immediate foregoing. If there is no employees on interdivisional run to move a train stranded under the Hours-of-Service then the contract language instructs the Carrier what to do: go to the extra board. Obviously, the real question centers on whether an Hours-of-Service train is stranded if interdivisional run employees are available to move it. The answer to that is: no.

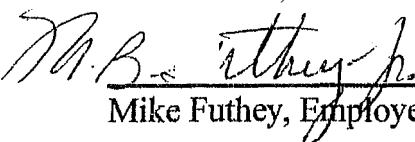
In view of these considerations the instant claim cannot be sustained.

**Award**

The claim is denied.

  
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Edward L. Suntrup, Neutral Member

  
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Gene Shire, Carrier Member

  
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Mike Futhey, Employee Member

Date: Nov 2, 2007