

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6171**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
GENE L. SHIRE, CARRIER MEMBER
JOHN D. MULLEN, EMPLOYEE MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BNSF SANTA FE, GENERAL COMMITTEE**

and

**THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

**Award No. 23
Case No. 23
Engineer R. D. Dubcak**

*Date of Hearing - February 21, 2001
Date of Award - April 30, 2001*

Statement of the Issue:

The Chairman and Neutral Member, after review of the entire record, has determined that the issue before this Board is:

Is Claimant engineer Dubcak entitled to penalty allowance of a basic day after Carrier called him for service from the Temple active board on October 19, 1998 fewer than four (4) hours after he had been "activated"?

FINDINGS:

Public Law Board No. 6171, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein.

Claimant was assigned to interdivisional pool service between Temple, Texas and Galveston, Texas governed by the Belleville Run Through Agreement effective January 21, 1992. Pertinent to the case at bar are the following provisions of that Agreement:

Active-Inactive Boards

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

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

...

The active Board will be updated each four (4) hours, by deleting engineers that have been called during the prior four hours, as well as adding engineers to the active board. Home terminal engineers (at their home terminal), when placed on the active board, will not have their order (number of times out) changed. (Emphasis added)

The record shows that Claimant was "activated" at the Temple terminal according to the above "variable calling" procedures at 9:24 a.m. on October 19, 1998 and was subsequently called for Train MCPSSVL1 18A at 10:45 a.m. on the same date. The Organization contends Claimant was mishandled because he was called for service fewer than four (4) hours after Carrier moved him from his prior "inactive" status to the "active" calling board. In due course, a claim for a basic day's penalty allowance was presented, and as resolution of the matter could not be reached on the property, it is now before the Board for disposition.

The Organization points out that the above provisions of the controlling interdivisional Agreement require Carrier to update the "active" boards at both Temple and Galveston terminals every four (4) hours to cover anticipated service requirements during the succeeding eight (8) hour period. On that basis, the Organization reasons that, *"in essence, when an engineer is updated and activated to the active board, he is not*

expecting a call for at least four (4) hours” (Organization submission at page 4). On principle, the Organization asserts before the Board that if Carrier continually activated the proper number of engineers at each update opportunity, no engineer would ever be called to work during his first four hours of activation. On this point, the Organization maintains that, *“poor planning on the part of the Carrier is what causes engineers to be called prior to being on the active board four hours”* (Organization submission at page 7), and asserts that Claimant in this case fell victim to that very issue.

The Organization concludes that Claimant’s activation and subsequent call from the Temple “active” board were therefore mishandled, and he is entitled to the penalty allowance claimed.

Carrier asserts that the Organization’s position is without contractual support, as Claimant was activated in proper order, and called in proper order, to cover service within the eight-hour period following his activation. Carrier argues that the controlling Agreement as cited above contains no requirement that engineers remain in “active” status for at least four (4) hours before being called for duty, and asks that the instant claim be denied on that basis for lack of merit.

Upon the whole of the record, the Board is convinced that Carrier’s position is well founded and on solid contractual ground. Indeed, the Agreement only requires that Carrier activate and call engineers at both Temple and Galveston terminals, in proper ratio and order, to cover anticipated service needs during the eight (8) hour period subsequent to activation. Such was the case here. Claimant was properly activated and then called, albeit a short time later, and the Organization has manifestly failed to direct the Board to a contractual basis for sustaining its contention that this was somehow improper. Indeed, the Board notes that an “active” board, by its very name and nature, conveys a clear requirement of readiness for duty.

The Board further reminds the Organization that Claimant was in unassigned pool service, and as such was not privileged to know his start time on October 19, 1998 in the same manner as he would have had he been regularly assigned. While the Board recognizes (and is sympathetic to) this inherent inconvenience, such is the nature of the beast. Carrier cannot reasonably *or contractually* be required to hold trains or alter service in deference to activated pool engineers who desire lengthier advance notice of duty. That privilege was not granted them under the existing Agreement, and this Board is barred from providing it unilaterally by sustaining the Organization’s position in this case.

The claim will be denied.

AWARD

The issue before this Board:

Is Claimant engineer Dubcak entitled to penalty allowance of a basic day after Carrier called him for service from the Temple active board on October 19, 1998 fewer than four (4) hours after he had been "activated"?

is answered in the negative, "No".

ORDER

The Board concludes that an award favorable to Claimant shall not be made.



John C. Fletcher, Chairman & Neutral Member



Gene L. Shire, Carrier Member

John D. Mullen, Employee Member

Dated at Mount Prospect, Illinois, April 30, 2001