NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION
39 South La Salle Street, Chicago 3, Illinois
With Referee Francis J. Robertson.

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Fireman R. W. Blohm, Western District, Western Division, for 100 miles and 5 hours 5 minutes overtime for service performed on turnaround local freight assignment, and 100 miles for work train service performed, October 6, 1943.

EMPLOYEES' STATEMENT OF FACTS: Following statement of facts was agreed to and signed jointly by the Division Superintendent and BLF&E Local Chairman under date of October 20, 1944:

“Fireman R. W. Blohm, assigned to local freight service, Western Division, bulletined to operate as follows:

310 Local Freight Service. Daily except Sunday.
Layover on Sunday at Sacramento.
Terminal—Sacramento. Turn points, Vacaville, Davis and Webster.

Operate:

1 trip Sacramento to Vacaville and return including two trips Davis to Webster and return. On duty Sacramento 7:00 A.M.

Fireman Blohm assumed duty on his assignment at Sacramento 8:25 A.M., October 6, 1943, departed on X-1748 at 9:50 A.M., arrived Elmira 2:50 P.M. and departed 5:50 P.M., arrived, Sacramento 10:00 P.M. and tied up at 11:10 P.M., October 6, 1943.

On arrival at Elmira, an intermediate point en route, after performing regular station work, Fireman Blohm was required to unload slag between Elmira (M. P. 59.4) and M. P. 58.8 on the eastbound main track. Due to the fact that there was no crossover at Signal 58.8 off the westbound main track, it was necessary for Fireman Blohm to make a movement of approximately ½ mile west on the eastward main track to M. P. 58.8 where slag was to be unloaded. Fireman Blohm departed Elmira 3:45 P.M., arrived at M. P. 58.8 at 3:55 P.M., unloaded slag until 4:10 P.M., at which

[293]
time it was necessary to clear the eastward main track for eastbound traffic and they departed that point at 4:10 P.M., arrived at Elmira Station, crossed over to clear the eastbound main line and, after the train had passed on the eastward main track, they again returned via the eastward main track to Signal 588, and completed the unloading of slag; again departed Signal 588, 4:45 P.M., unloading slag enroute, and returned to Elmira (M.P. 59.4) at 5:25 P.M., October 6, 1943.

Allowed 100 miles, 6 hours 45 minutes overtime at local freight rate.

Claim is made for 100 miles, 5 hours 5 minutes overtime and, in addition thereto, 100 miles out of assignment, 3:45 P.M. to 5:25 P.M., October 6, 1943.

Claim declined.”

POSITION OF EMPLOYEES: Fireman R. W. Blohm was assigned to turnaround local freight service in accordance with the following provisions of the SP Firemen’s Agreement:

ARTICLE 14—captioned “Assigned Turnaround Freight Service.”

“Sec. 1. Firemen or helpers assigned to a series of branch freight, combination freight and passenger, or mixed runs, or established main line turnaround local freight service, will compute their time as a single trip. Bulletin shall specify number of trips, name terminals and turning points and will definitely specify kind of service to be performed. In no case shall any portion of the assignment include trip or trips in helper service. (Emphasis supplied.)

NOTE: Last sentence agreed to with the understanding that this will not set aside or supersede decisions wherein crews were used to push trains out of yard within yard limits.

Sec. 2. Continuous time to be allowed from time fireman is required to report for duty on initial trip and to end upon completion of final trip of assignment with a minimum of 100 miles. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis at an hourly rate of 3/16 of the daily rate according to class of engine or other power used. When miles run exceed these limits, actual miles will be allowed.

QUESTION: Assignment under this Section, A to B and return, distance 90 miles round trip; thence in opposite direction A to C and return, distance 59 miles; total mileage of assignment 149 miles. On a certain date crew consumes 11 hours 45 minutes making trip A to B and return, and are released without making trip A to C and return. How should they be compensated?

DECISION: Allow 149 miles, mileage of assignment and overtime, if any, after schedule of 11 hours and 55 minutes.

Sec. 3. Firemen or helpers assigned under this rule who are required to perform work not a part of regular assignment, such as pulling trains into terminal account crew of which tied up under law, engine failure, or account shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment; in like manner, when firemen or helpers en route are taken off assignment and required to bring engine
or train to terminal, crew of which tied up under law, or account engine failure, or shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment. If used en route to make side trip off assigned territory and such trip covers a distance of more than twelve miles in one direction, a minimum of 100 miles will be allowed in addition to assignment. In each case rates and rules covering such service will govern. Actual time in other service to be excluded in computing overtime in assigned service. Under the above conditions, crew used to bring disabled train to terminal will compute time as a single trip from time of leaving assignment until return thereto with a minimum of 100 miles.

NOTE: In cases where main track is obstructed due to derailments, engine failure, break-in-twos, and traffic is threatened with serious delay and assigned crews under this Article are used to assist in relieving obstruction, question of runarounds will be disposed of on their merits between representatives of the Company and firemen.”

To assist the Board, a diagram of trackage involved is shown below:

![Diagram of trackage involved](attached image)

Claimant was required to perform work train service, not a part of his local freight assignment, for which he claims 100 additional miles based on the following provisions of the SP Firemen’s Agreement:

**ARTICLE 13—captioned “Freight Service.”**

“Section 1. The minimum rate for firemen and helpers in through and irregular freight, pusher and helper, mine run or roustabout, belt line or transfer, work, wreck, construction, snowplow, circus train, messenger, light engines, trains established for the exclusive purpose of handling milk, and all other unclassified service, shall be according to class of locomotive and district, for **eight hours or less, 100 miles or less**, miles made in excess of 100 pro rata.” (Emphasis supplied.)

**ARTICLE 16—captioned “Basis for Overtime and When Paid.”**

Sec. 1. In all classes of service covered by Article 13, **100 miles or less, eight hours or less** (straightaway or turnaround), shall constitute a day’s work; miles in excess of 100 will be paid
for at the mileage rates provided, according to district, class of engine or other power used."

The Board will observe that Section 1 of Article 13 defines, "work" (train) service as a class of service separate and distinct from any of the other classes of service enumerated and specifically provides that eight hours or less, 100 miles or less, shall constitute a day's work.

Section 1 of Article 16, quoted above, also provides that 100 miles or less, eight hours or less, shall constitute a day's work in any of the classes of service enumerated in Article 13.

Claimant in this case performed local freight service on his assignment, Sacramento to Elmira. At Elmira he was injected into work train service at 3:45 P.M. and performed work train service until 5:25 P.M., at which time he was returned to local freight service. Claimant performed 1 hour 40 minutes of work train service, which constitutes a day's work according to Section 1 of Article 16, quoted above.

A trip in freight or passenger service is defined by the SP Firemen's Agreement as follows:

ARTICLE 2—captioned "What Constitutes a Trip."

"Sec. 1. In passenger or freight service a fireman has reached the end of a trip when he reaches the division or district terminal at which engine crews are usually changed, or arrives at the established terminal of his train, as shown by his assignment, and having done so his trip will be completed and he will take his place on the board in accordance with the rules governing the running of firemen in such service. Should be proceed farther with the same train or be sent out on another train, he will, in either case, begin another trip.

Sec. 2. On a turnaround trip (where fireman is turned back at an intermediate point), the starting point will be the terminal as well, except as provided for in Section 3, this Article.

Sec. 3. Firemen or helpers in pool or irregular freight service may be called to make short trips and turnarounds, with the understanding that one or more turnaround trips may be started out of the same terminal and paid actual miles, with a minimum of 100 miles for a day, provided:

(1) That the mileage of all the trips does not exceed 100 miles.

(2) That the distance run from the terminal to the turning point does not exceed twenty-five miles.

(3) That firemen or helpers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, except as a new day subject to the first-in first-out rule.

(4) Initial call will specify short turnaround service.

(5) This section does not apply to firemen or helpers in pusher and helper service, minc runs, work trains, or wreck trains."

The Board will note that Item (5) of Section 3, quoted above, definitely distinguishes between a trip in work train service and a trip in straightaway or turnaround freight service. A trip in straightaway freight service is ended when fireman reaches the division or district terminal. In turnaround freight service, a fireman must be called to make one or more trips within
certain limitations specified in Section 3 of Article 2, quoted above. How-
never, work train service has no limitation on the number of trips that can
be made in and out of the terminal, or the distance train can be run from
the terminal, nor does it prohibit (as in freight service) running a fireman
out of the terminal after he has been on duty over eight hours. In other
words, the terminal provisions are modified to specifically cover work train
service. That work train service is separate and distinct from freight
service is evidenced by special rules covering work train service in the SP
Firemen's Agreement, which read:

ARTICLE 26—captioned “Work Trains—Working Conditions.”

“Sec. 1. Firemen in work-train service shall be run to a place
where sleeping and eating accommodations can be secured, except
where the company furnishes such accommodations.

Sec. 2. Firemen held for work-train service shall be allowed
100 miles at the minimum freight rate for each calendar working
day on which no service is begun; also on Sundays, except when at
district terminals or at bulletined tie-up points.

Sec. 3. The bulletined tie-up point of firemen assigned to
work-train service will not be changed unless the work has pro-
gressed sufficiently to warrant a change, and such new bulletined
tie-up point must be in excess of 25 miles from former bulletined
tie-up point.

It is understood that where the bulletined tie-up point is
changed as above and the service required of the fireman is similar
to that bid in by him, it will not be considered a new run, and will
not be bulletined for seniority choice of firemen, and he will accept
the provisions of Section 2, this Article, at such bulletined tie-up
point. Bulletins changing tie-up points will read as follows:

'Effective Sunday ................. bulletined tie-up
point for work train held by fireman .............
will be .................. instead of ...................'

Sec. 4. Firemen leaving terminals in road service and used
in work-train service en route are not subject to work train rules.
They will conform to provisions of Article 22 when conditions
specified in Article 22 obtain.

Sec. 5. In construction of new lines forming a part of the
Southern Pacific Company's lines, Pacific Lines, firemen on the
seniority district of that part of a line where the new line diverges,
will be given the right to bid for service in the Construction De-
partment under seniority rules governing. If no application is
received the youngest man on the working list of that district will
be assigned. The men assigned to such service will be compensated
as to rates of pay and hours of service in accordance with agree-
ment provisions. The working rules and conditions of the Con-
struction Department will obtain.

Sec. 6. When unassigned work trains are tied up at outside
points where extra lists are maintained, they should be manned
from such extra lists. However, when extra men in unassigned
work train service are tied up at outside points where an extra list
is maintained, they should remain in that service unless it is known
that work train will be tied up thereafter only at that point, in
which case crew from other extra list will be released and service
manned from the extra list where crew ties up.

Sec. 7. When fireman is deadheaded to tie-up point of work
train to fill vacancy on same, and/or on completion of day's work
deadheaded from tie-up point of work train to terminal, he will be allowed deadhead mileage in accordance with Article 31, in addition to time allowed in work train service.

Sec. 8. A fireman laying off and reporting for duty will on his request be advised where work train is to tie up on completion of day’s work, and will be permitted to assume duty at such tie-up point, provided the tie-up point can be determined sufficiently in advance.

Sec. 9. Firemen performing the following service will be paid miles or hours, whichever is the greater, for such service in addition to their work train day:

1. Engine crew handles light engine or engine and caboose from district terminal to outside point, goes into work train service, or engine crew handles light engine or engine and caboose from outside point to district terminal on discontinuance of work train.

2. Engine crew on completion of work train day handles light engine or engine and caboose from outside point to district terminal or other point for fuel, water, repairs, or other necessary attention to engine.

3. Engine crew handles light engine or engine and caboose from district terminal or other point after having been fueled, watered, repaired, or received other necessary attention to engine, or handles an engine to take the place of work train engine to point where work train service begins.

4. When work train fireman performs any service out of terminal after being released at terminal or work train tie-up point, he shall begin a new day; time and mileage for subsequent service to be computed independently in accordance with the rules for class of service performed.”

Section 4, Article 26, quoted above, refers to the use of road service firemen in work train service only in emergencies, in accordance with Article 22, SP Firemen’s Agreement, reading as follows:

ARTICLE 22—captioned “Sixteen-Hour Tie-Up.”

“When firemen en route are used in work-train or snow-plow service on account of floods, washouts, snow storms, slides or other unusual conditions, or firemen en route are delayed by such conditions, time to be computed as follows:

Continuous time, less time tied up under the law, will be allowed for first 24 hours, computed from time required to report for duty. For first 16 hours of each subsequent 24-hour period delayed fireman will be allowed 200 miles. Should miles run exceed 200, or hours on duty exceed 16 in any 24-hour period, actual miles or hours will be allowed. If trip is resumed during first 16 hours of any 24-hour period held, time will be computed continuously from end of previous 24-hour period, provided, that if overtime accrues on the trip, that portion of the overtime due to starting pay at the expiration of any 24-hour period shall be paid for at the pro rata rate in order that time and one-half for overtime will not be so applied as to increase the rates paid for the time computed continuously from end of previous 24-hour period.

It is understood under this rule that the first 200 miles allowed on each 24-hour period will apply on the guarantee provided in Article 36.”
The Board will note that Article 22 applies to firemen en route used in emergencies in work train service account of floods, washouts, storms, slides, or other unusual conditions. The Employes would construe the term "other unusual conditions" to mean wrecks when the main track is tied up. However, even in cases of wrecks the Agreement does not permit the use of assigned firemen to perform work train service without the penalty of run-around payments to extra firemen. The Board will observe that the note following Section 3, Article 14, quoted herein, describes how runaround claims shall be disposed of when assigned firemen are used in work train service account of wrecks—also see Employes' Exhibit 5.

The Board will also observe that Section 6, Article 26, quoted herein, provides that extra firemen should protect work train service. There were extra firemen at Oakland available for work train service, but they were not called.

It is the Position of Employes that the classes of service enumerated in Section 1, Article 13, quoted herein, can not be combined, also that each class of service, 100 miles or less, eight hours or less, constitutes a day's work, and must be paid for separately in accordance with Section 1, Article 16, quoted herein.

The Carrier contends that Article 12, SP Firemen's Agreement, reading as follows:

ARTICLE 12—captioned

"Trip Rate for Different Services and on Locomotives of Different Weights"

Sec. 1. Road firemen or helpers performing more than one class of road service in a day or trip will be paid for the entire service at the highest rate applicable to any class of service performed, except when used in freight or passenger service over part of trip and balance run light, will be paid on the same basis as the crew which is helped. The overtime basis for the rate paid will apply for the entire trip.

It is understood that under the above rule excess mileage shown in Article 11 will not be paid unless service covers the entire specified territory.

Sec. 2. When two or more locomotives of different weights on drivers are used during a trip or day's work, the highest rate applicable to any engine used will be paid for the entire day or trip."

permits them to combine work train service with freight service. It is the Position of Employes that Article 12 does not apply to classes of service which pay the same rate enumerated in Section 1, Article 13, quoted herein, but is applicable in converting a lower rate to a higher rate, such as passenger service to freight; freight to local freight; valley rates to mountain rates, or small engines to a large engine rate. The Board will note that these conditions are not mentioned in Section 1, Article 13.

The Position of Employes that work train service and freight service can not be combined has been sustained on this property, against strong argument by the Carrier to the contrary, in Awards 11416, 11570 and 11746, First Division, National Railroad Adjustment Board.

The Position of Employes has been further supported by your Board in the following Awards: 1990, 4053, 4141, 6675, 6676, 6677, 7519, 7520, 7521, 7522, 9270, 9301, 11368, 11388, 11431, 11693 and 11694.
The Board’s attention is directed to Awards 6164, 6437, 7154, 8882, 8896, 9738, 10185, 10903 and 11438 which prohibit the combination of freight and wrecker service.

Awards 1971 and 1989 prohibit the combination of freight and snow service.

Awards 1739, 1746, 3235, 3482, 4440, 10648, 10663, 11551 and 11660 prohibit the combination of helper and freight service.

Awards 12198 and 12199 prohibit the combination of messenger and helper service.

Award 5571 prohibits the combination of mine run and helper service.

The Board will readily see that the classes of service enumerated in Section 1, Article 13, SP Firemen’s Agreement, can not be combined on a continuous time basis.

The Position of the Employees, that classes of service enumerated in Section 1, Article 13 can not be combined on a continuous time basis is further supported by settlements with this Carrier, reproduced herewith as Employees’ Exhibits, wherein allowance of 100 miles was made when firemen were required to perform work not included in assignments, as follows:

Employees’ Exhibits 1 through 4—apply to work train and freight service;

Employees’ Exhibit 5—applies to freight and wrecker service;

Employees’ Exhibit 6—applies to work train and helper service;

Employees’ Exhibits 7 and 8—apply to freight and messenger service;

Employees’ Exhibit 9—applies to roustabout and work train service.

It is the Position of Employees that when claimant unloaded slag on the eastward main track at Elmira, he was performing a class of service outside of his local freight assignment and that claimant should be paid separately for each class of service performed.

All facts and evidence offered herewith have been submitted to the Carrier’s representative through correspondence and in conference.

The Board is requested to render a decision sustaining the claim as presented by the Employees.

CARRIER’S STATEMENT OF FACTS: Fireman R. W. Blohm, Western District, Western Division, assigned to local freight service bulletin to operate as follows:

310 Local Freight Service. Daily except Sunday.

Layover on Sunday at Sacramento.

Terminal—Sacramento. Turn points, Vacaville, Davis and Webster.

Operate:

1 trip Sacramento to Vacaville and return, including two trips Davis to Webster and return.

On duty Sacramento, 7:00 A. M.
reported for duty on his assignment at Sacramento at 8:25 A. M., October 6, 1943; departed on Extra 1748 at 9:50 A. M.; arrived at Elmira at 2:50 P. M.; departed from Elmira at 5:50 P. M.; arrived at Sacramento at 10:00 P. M. and went off duty at 11:10 P. M.

Elmira is located at Mile Post 59.4 on a double track main line intermediate between Sacramento and Oakland and is also a junction point at which a single track branch line leading to and beyond Vacaville connects with the main line.

Station tracks at Elmira parallel the westward main track to a point opposite Mile Post 58.8 on the eastward main track but there are no station tracks paralleling the eastward main track west of Elmira station, nor is there a crossover between the eastward and the westward main tracks at Mile Post 58.8.

After completing station work following his arrival at Elmira on October 6, 1943, Fireman Blohm was used in service to unload slag on the eastward of the two main tracks, between Elmira (MP 59.4) and Mile Post 58.8. To accomplish that work a westward movement of .6 of a mile was made from Elmira to Mile Post 58.8 on the eastward main track, consuming from 3:45 P. M. to 3:55 P. M. At 4:10 P. M. the movement was reversed due to the need of clearing the eastward main track at Elmira for the passage of an eastward train. After the said train had passed, movement was again made from Elmira to Mile Post 58.8 on the eastward main track where the unloading of slag was resumed until 4:45 P. M. when movement was commenced from Mile Post 58.8 toward Elmira, unloading slag en route, arrived at Elmira at 5:25 P. M.

Fireman Blohm was allowed 100 miles 6 hours and 45 minutes overtime at local freight rate.

Claim is made in behalf of Fireman Blohm for 100 miles 5 hours and 5 minutes overtime and in addition thereto, 100 miles for service outside of assignment, computed from 3:45 P. M. to 5:25 P. M., October 6, 1943.

Claim denied.

POSITION OF CARRIER: This dispute involves the question of whether, under the current agreement covering firemen, the Carrier had the right to use a fireman operating on a turnaround local freight assignment, temporarily in work train service en route within the station limits (between station mile boards) of an intermediate station where yard limits have not been established, then to complete his local freight assignment to final terminal, and compensate said claimant on a continuous time and mileage basis between the terminals of his assignment. The Carrier will conclusively establish that it had the right under said agreement to so use the claimant and to compensate him in the manner herein stated (continuous time and mileage) for the combined service.

Section 4, Article 26, of the current agreement covering firemen, is as follows:

"Sec. 4. Firemen leaving terminals in road service and used in work-train service en route are not subject to work train rules. They will conform to provisions of Article 22 when conditions specified in Article 22 obtain."

(Article 22 referred to in the above quotation deals with firemen who are used in work train or snow plow service on account of floods, washouts, snow storms, slides, or other unusual conditions, or firemen delayed en route by such conditions. It is not involved in the instant dispute.)

Section 4, Article 26, by itself clearly establishes that work train rules did not apply to work train service performed by claimant after departure
from terminal in road service (local freight service), therefore, it is obvious, as work train rules were not applicable, that local freight rules applied from terminal to terminal (Sacramento to Elmira and return), and that continuous time and mileage payment made the claimant was proper in accordance with Article 1; first paragraph of Section 1, Article 2; Section 1, Article 13; Sections 1 and 2, Article 14; Section 1, Article 15; and Article 16, of the current agreement covering firemen.

Before quoting the rules under which the claimant was compensated, Carrier directs the Board’s attention to that part of the findings in Award No. 11538, First Division, National Railroad Adjustment Board, involving a fireman’s case on this property, as follows:

“The contention made on behalf of the Carrier that lap backs or turnarounds are of the essence of work train service and are, therefore, permissible, if well founded as a general rule, is not applicable here. Article 26, Section 4 of the Agreement specifically provides that “firemen leaving terminals in road service and used in work-train service enroute are not subject to work train rules . . . .” It follows that it was not permissible for the Carrier to require the claimant to make the lap back trip in question without incurring liability for an additional day’s pay.” (Emphasis supplied.)

Here the Board decided that firemen leaving terminals in road service and used in work train service en route are not subject to work train rules, but sustained claim for 100 additional miles on the basis that the fireman involved, while performing work train service en route on a freight run, was required to make a lap back trip, claim being sustained under Article 2, Section 2, of the current agreement covering firemen, which provides:

“On a turnaround trip (where fireman is turned back at an intermediate point), the starting point will be the terminal as well, except as provided for in Section 3, this Article.”

In the instant case the claimant did not make a turnaround trip but temporarily performed work train service within the station limits of Elmira, movement in one direction not exceeding .6 of a mile. Had the movement been made beyond either of the station mile boards at Elmira the claim would have been paid on the basis of an unassigned lap back trip. This feature will be further discussed infra.

The rules of agreement under which claimant was compensated, are as follows:

**ARTICLE 1**

**Beginning and Ending of a Day.**

“In all classes of service firemen and helpers’ time will commence at the time they are required to report for duty, and shall continue until the time the engine is placed on the designated track or they are relieved at terminal. Firemen are relieved when registering in.

**Question 76. Interpretation No. 1, Supplement No. 24:**

Does this section contemplate the payment of continuous time between terminals whether crews are tied up under the law or otherwise?

**Decision:** Yes, deducting time tied up under the law, schedule rules or accepted practices.”
ARTICLE 2

What Constitutes a Trip.

"Sec. 1, first paragraph. In passenger or freight service a
fireman has reached the end of a trip when he reaches the division
or district terminal at which engine crews are usually changed, or
arrives at the established terminal of his train, as shown by his
assignment, and having done so his trip will be completed and he
will take his place on the board in accordance with the rules govern-
ing the running of firemen in such service. Should he proceed
farther with the same train or be sent out on another train, he
will, in either case, begin another trip."

ARTICLE 13

Freight Service.

"Section 1. The minimum rate for firemen and helpers in
through and irregular freight, pusher and helper, mine run or
roustabout, belt line or transfer, work, wreck, construction, snow-
plow, circus train, messenger, light engines, trains established for
the exclusive purpose of handling milk, and all other unclassified
service, shall be according to class of locomotive and district, for
eight hours or less, 100 miles or less, miles made in excess of 100
pro rata."

ARTICLE 14

Assigned Turnaround Freight Service.

"Sec. 1. Firemen or helpers assigned to a series of branch
freight, combination freight and passenger, or mixed runs, or
established main line turnaround local freight service, will compute
their time as a single trip. Bulletin shall specify number of trips,
name terminals and turning points and will definitely specify kind
of service to be performed. In no case shall any portion of the
assignment include trip or trips in helper service.

Sec. 2. Continuous time to be allowed from time fireman is
required to report for duty on initial trip and to end upon com-
pletion of final trip of assignment with a minimum of 100 miles. On-
runs of 100 miles or less, overtime will begin at the expiration of
eight hours; on runs of over 100 miles, overtime will begin when
the time on duty exceeds the miles run divided by 12½. Overtime
shall be paid for on the minute basis at an hourly rate of 3/16 of
the daily rate according to class of engine or other power used.
When miles run exceed these limits, actual miles will be allowed."

ARTICLE 15

Local or Way Freight.

"Sec. 1. Except as provided in local rates tabulated in Sec-
tions 4 and 5 of Article 13, a minimum of forty cents per hundred
miles, or less, will be added for local freight service to through
freight rates for firemen or helpers, according to class of loco-
motive and district. Miles over one hundred to be paid for pro
rata."

ARTICLE 16

Basis for Overtime and When Paid.

"Sec. 1. In all classes of service covered by Article 13, 100
miles or less, eight hours or less (straightaway or turnaround),
shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, according to district, class of engine or other power used.

Question 47, Interpretation No. 1, Supplement No. 24:

Certain railroads formerly paid 100 miles between terminals, notwithstanding the distance may have been less than 100 miles. Does this Article permit operating turnarounds turning at terminal on continuous time and mileage?

Decision: No. Schedule rules and accepted practices will govern.

Sec. 2. On runs of 100 miles or less, overtime will begin at the expiration of eight hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to district, class of engine or other power used."

Even if the current agreement covering firemen did not contain Section 4, Article 26, quoted and discussed supra, it would still have been proper to have compensated the claimant on a continuous time and mileage basis under the above quoted rules, and in this connection the Board's attention is directed to Section 1, Article 12, of said agreement, as follows:

"ARTICLE 12.

Trip Rate for Different Services and on Locomotives of Different Weights.

Sec. 1. Road firemen or helpers performing more than one class of road service in a day or trip will be paid for the entire service at the highest rate applicable to any class of service performed, except when used in freight or passenger service over part of trip and balance run light, will be paid on the same basis as the crew which is helped. The overtime basis for the rate paid will apply for the entire trip.

It is understood that under the above rule excess mileage shown in Article 11 will not be paid unless service covers the entire specified territory."

The above quoted rule was promulgated as Section (c) of Article VII of Supplement 24 to General Order No. 27 of the United States Railroad Administration. It constituted a change in a former rule having its genesis in Article I of the 1915 Western Arbitration Award and carried forward as Article V (c) of Supplement 15 to General Order No. 27. It was incorporated in the agreement covering firemen on this property in compliance with the directions contained in Article XXIII of that Supplement. The manner in which the rule as changed by Supplement 24 was intended to be applied is clearly set forth in the "Memoranda of understandings in connection with the memorandum of the Director General, dated November 15, 1919, in regard to conditions under which time and one half for overtime would be granted in freight service," which also contained the "Understandings reached in conference held at Washington, D. C., from December 2 to 13, 1919, between the Directors of the Divisions of Operation and Labor of the United States Railroad Administration and the chief executives of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and the Brotherhood of Railroad Trainmen, accompanied by a special committee composed of general chairmen of the respective organizations." Among these latter understandings there is the following as to the application of the "Combination of service" or "Two or more classes of road service" rule:
ARTICLE V, SUPPLEMENT NO. 24.

"Question 1.—Give examples or application of the combination of service rule as contained in the proposition submitted, as set out in the following combinations of service between terminals, which heretofore have been recognized as two services or for which special allowance has been paid.

Answer.—In view of the introduction of time and one-half for overtime in freight service it is felt that Article V(c) of Supplement No. 24, will have to be changed. It provides that where engineers and firemen are required to perform a combination of more than one class of road service they will be paid at the rate and according to the rules governing each class of service, etc. Under this rule service may consist of passenger and freight and overtime would be paid after fractions of a day. It is not the intent to pay time and one-half in freight service prior to 8 hours on runs of 100 miles or less, or prior to the hours determined by dividing by 12½ the miles run when in excess of 100. To preserve Article V (c) would necessitate continuance of pro rata overtime for freight portions of the trip where less than 100 miles were run, and all passenger overtime be paid at pro rata rates. Rather than have such a complicated condition it is believed that the rule should be changed to provide that where two or more classes of road service are performed in continuous service the highest rate applicable to any class of service or to the heaviest locomotive used shall apply for the entire service, and the overtime basis applicable to such rates shall be applied. Under such a rule the through or the local freight rate being higher than the passenger rate, they would be applied according to the class of freight service performed, and the freight overtime basis would apply.

(a) A crew starts out in through-freight service and is called upon to do work-train service en route, or vice versa.

Answer.—Two classes of service can only be involved where different rates are paid. Where the through freight and work train rates are the same, two classes of service are not involved; therefore, through-freight rates with the through-freight overtime basis would apply; where the rates are not the same, the higher rate shall apply for the entire trip.

(b) A crew starts out in passenger service and is called upon to do freight, work, or switching en route, or vice versa.

Answer.—As will be explained under item (c), question 1, there is no intent to consider that switching en route will change the classification of a train. Where two or more classes of road work are performed, the passenger, freight, or work service would be combined and the entire service paid on the basis of 100 miles or less, 8 hours or less, to constitute a day; miles in excess of 100 to be paid pro rata and overtime accruing to be paid at the rate of time and one-half.

(c) We understand that under the combination service rule, that heretofore where switching en route has been paid for, if crews on same railroad are now called to perform switching it converts a through freight train to a local freight basis, or if heretofore through freight crews called upon to do switching at terminals, or in yards en route, and under circumstances where heretofore obtained, are called upon to do such work, that the combination service will be for each member of the crew, that which brings the most compensation; for example, the conductor would be paid the local freight rate; the brakeman on the train the yard rates.
Answer.—The arbitrary and special allowances for switching at terminals are definitely dealt with under Article X as revised. Arbitraries or special allowances for switching performed on road, whether switch engines are maintained at stations or not are intended to be eliminated, as provided in Article X (a), as revised. Excepting as provided under item (d), question 1, there is no intent that the performance of switching en route shall convert a through freight into a local freight.

The case originally submitted was as follows:

'Rules applicable to changing service en route, or two classes of service for which two days are now paid, or one day plus varying allowances, are absorbed; take the highest rate for the trip or day.'

No question was presented concerning through freight crews doing switching on road or at terminals. The Baltimore & Ohio rule was mentioned, under which, if a local freight train was unable to complete its trip and a through freight train was required to do the work of the local, it receives a minimum of a day for the through freight service plus certain allowances for the local freight service. Later the following question was presented to the Director General, to which he replied as shown:

'Question (f).—Will highest rate for day be paid when two or more classes of service are performed on same day or trip?'

Answer.—When two or more classes of road service are performed on same day or trip there is no objection to applying the rate applicable to the highest class of service performed with the overtime basis for entire trip applicable to the rate paid.'

It is felt that these questions and answers clearly indicate that at no time was there any thought that the performance of switching en route would change the classification of a train for purposes of pay.

(d) Are rules which convert a through-freight crew to a local freight basis, making 3, 4, 5 or other stops, or by doing a given amount of switching, continued?

Answer.—Yes.'

Carrier also directs the Board’s attention to Awards Nos. 6116, 6667, 6669, 6748, 8288, 9573 and 11922 and Decision 1007, Train Service Board of Adjustment for the Western Region, the latter involving this railroad. In all of these cases, the combination of service rule was recognized as being applicable to a combination of road service and work train service performed during the same day or trip.

In the findings in Award No. 9573 of your Board Referee Fred L. Fox stated in part as follows:

"The work train service performed by Engineer Roix covered by claims (2), (3) and (4), was performed within his assigned run, and was merely a different class of road service, within the contemplation of Section (a) of Article 12 of the Agreement. We think this finding is fully supported by Awards 6116, 6667 and 6669, in principle, by Awards 6077 and 8288, all by this Division. These awards were made on dockets coming from other railroads, but were based on the Combination of Service Rule which, on these roads, is not materially different from the corresponding rule of the
Agreement here involved. In the three awards first cited above, the employe, as here, was required to pick up cars, and then do work train service; while in the last two, the work train service was performed in connection with the train being handled on his assignment. Subsequent Awards do not appear to have departed, in principle, from the awards cited above. Awards 6675-6-7 are based on what was thought to be a combination of service "in the terminal at the time the trains were sent out and was not a change of classes of services 'en route'" and it was held that this could not be done. Award 7519 is based on the three awards last cited above, although it is not clear that the facts were the same. In Award 7083, a cited agreement was held to distinguish that case from awards first cited above. On the basis of Awards 6116, 6667, 6669, 6077 and 8288 of this Division, claims (2), (3) and (4) should be denied."

The claim in the instant case is simply an attempt of the organization to secure an unearned and unwarranted allowance, clearly contrary to existing agreement provisions, namely, Section 4, Article 26, and Section 1, Article 12, quoted supra.

The question herein involved also is one covering the matter of Rules Revision, which, under the provisions of the Railway Labor Act, is one not proper for submission to this Board.

The Board's attention is also directed to the findings in Award No. 5396, which are similar to the findings in other awards of this Board, reading:

"In the absence of rules clearly establishing the right it will not be held that the carriers and employes contracted to pay and to be paid two days' pay for one day's work. In the instant case, the established practice followed, without objection, by both carriers and employes over a long period of time supports the position taken by the carrier in the construction of the cited rules."

The controlling agreement rules in this case, instead of clearly providing for the payment of two days' pay for one day's work, definitely provide for the payment of one day's pay for the entire service, including overtime earned; furthermore, it has been the established practice for at least 30 years to compensate firemen under agreement rules in exactly the same manner as the claimant was compensated in this case.

The petitioner's general chairman in his letter dated December 19, 1944, stated:

"It will be noted from joint statement of facts that Fireman Blohm assigned to turnaround local freight service was required to perform work train service between M. P. 59.4 and 58.8, October 6, 1943. Bulletin covering assignment did not include service performed by Fireman Blohm between M. P. 59.4 and 58.8.

This claim is based on Section 2, Article 2, Section 1, Article 13, Sections 1 and 3, Article 14, Section 1, Article 16, SP Firemen's Agreement:

Co. file E&F 176-192—Org. file F-4279-14
Co. file E&F 176-203—Org. file F-4308-14
Co. file E&F 176-118-2—Org. file F-4852-14
Co. file E&F 176-291—Org. file F-5290-14
Co. file E&F 150-11—Org. file F-2497-20

also by Decisions 4409 to 4426, inclusive, Train Service Board of Adjustment for the Western Region, and Awards 1692, 2598 and 2599, National Railroad Adjustment Board, First Division."

Section 2, Article 2 (quoted supra) deals with turnaround trips where firemen are turned back at intermediate points. Fireman Blohm did not
make a turnaround trip of any character while engaged in work train service; he performed work train service solely within the station limits of Elmira. For the information of the Board, this carrier upon receipt of Award 4335, First Division, National Railroad Adjustment Board, which sustained a claim of an engineer assigned to turnaround local freight service for 100 miles for making an unassigned lap back trip between intermediate stations applied the said award to firemen in the same manner as to engineers, i.e., when unassigned lap back or lap forward trips were made in conjunction with assigned turnaround local freight service. In addition, the carrier expanded the provisions of the award to include unassigned lap back or lap forward trips which involved a movement into or out of the yard and switching limits of a station where such limits were defined by the location of yard limit boards, and into or out of the station limits of a station as defined by the station mile boards where yard limit boards not located, regardless of whether the movement was made from station to station.

On October 12, 1945, the general committee, Brotherhood of Engineers agreed, as evidenced by general chairman’s letter of that date, copy of which is attached as Exhibit A, that movements made within yard switching limits did not constitute lap ahead or lap back trips, but continued a controversy as to what constituted station limits at stations where yard limit boards were not used. That controversy was finally settled on September 11, 1947, copy of settlement attached hereto as Exhibit B. Particular attention is directed to that part of the settlement, as follows:

“It was also agreed that movements within switching limits; side trips in straight-away local freight service not over 12 miles in one direction; movements within a distance of one mile from the last switch of a station siding in the direction of movement for any purpose; and the doubling of a train occasioned by Acts of Providence, break-in-two, or accident to the train or engine on which engineer is working, do not classify as lap back trips.” (Emphasis supplied.)

The carrier is not endeavoring by citing the above two settlements to leave the impression with the Board that they are cited as supporting the declaration of the instant claim; they are merely brought to the Board’s attention to show the difference in the views of the General Committee of the BLF&E and the General Committee of the BofLE in the application of identical rules. The terms of the latter of the two settlements were proposed to the General Chairman, BLF&E, in conference but were rejected by him.

The Board will appreciate that there must be a line of demarcation to distinguish station work from road work at stations where station limits are not defined by the location of yard limit boards. In such circumstances the carrier maintains that the station mile boards, located one mile from the last switch of a station siding in each direction, are the limits of a station, which position conforms with the settlement reached with BofLE as reflected in Exhibit B. It would be ridiculous to classify movements within such limits as lap back trips; it might just as well be contended backward and forward movements in the conduct of switching operations at a station constituted lap back trips.

Section 1, Article 13, of the current agreement covering firemen, cited by general chairman (quoted supra) was fully observed in the payment to the claimant of 100 miles and 6 hours 45 minutes overtime.

Section 1, Article 14 (quoted supra) plainly states that firemen assigned under that rule will compute their time as a single trip, and that bulletin shall specify number of trips, name terminals and turning points and definitely specify kind of service to be performed. Fireman Blohm’s time was computed as a single trip; the bulletin conformed to the requirements of the rule by setting forth the number of trips (one trip Sacramento to Vacaville and return, including two trips Davis to Webster and return); the terminal (Sacramento), and the turning points (Vacaville, Davis and Web-
ster) were named, and the kind of service to be performed was specified (local freight service).

Section 3, Article 14, is as follows:

"Sec. 3. Firemen or helpers assigned under this rule who are required to perform work not a part of regular assignment, such as pulling trains into terminal account crew of which tied up under law, engine failure, or account shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment; in like manner, when firemen or helpers en route are taken off assignment and required to bring engine or train to terminal, crew of which tied up under law or account engine failure, or shortage of fuel or water in locomotive, will be paid a minimum of 100 miles for each time so used in addition to assignment. If used en route to make side trip off assigned territory and such trip covers a distance of more than ten miles in one direction, a minimum of 100 miles will be allowed in addition to assignment. In each case rates and rules covering such service will govern. Actual time in other service to be excluded in computing overtime in assigned service. Under the above conditions, crew used to bring disabled train to terminal will compute time as a single trip from time of leaving assignment until return thereto with a minimum of 100 miles."

Fireman Blohm did not perform any of the services outlined in this rule; in fact he did not leave the limits of Elmira station in the performance of work train service. This rule as evidenced by its clear wording, applies exclusively to road movements outside of assignment and not to work performed at a station.

Section 1, Article 16, (quoted supra) was fully complied with in the payment to claimant of 100 miles, and Section 2 of that Article was also complied with in the payment to claimant of 6 hours 45 minutes overtime.

The five settlements cited by general chairman have no bearing whatever on this case, as evidenced by a brief analysis of each, as follows:

Settlement covered by Co. File E&F 176-192—Org. file F-4279-14, covers a case of a fireman assigned to turnaround local freight service, home terminal Lodi, turning points Stockton and Sacramento, who operated Lodi to Sacramento and return, then after train crew was released, operated with light engine from Lodi to Stockton and return, for the purpose of exchanging engines at Stockton. He was allowed a separate trip of 100 miles Lodi to Stockton and return, under Decision No. 4428, Train Service Board of Adjustment for the Western Region.

Settlement covered by Co. File E&F 176-203—Org. file F-4308-14, covers the same kind of a case as covered by the previous settlement.

Settlement covered by Co. File E&F 176-118-2—Org. file F-4852-14, covers a case of a fireman assigned to local freight service who was allowed an additional 100 miles account brought on duty at the initial terminal in advance of regular reporting time of his assignment to perform work train service.

Settlement covered by Co. File E&F 176-291—Org. file F-5290-14, covers a case of a fireman who on date of claim was assigned to operate in local freight service from Tracy to Oakdale via Stockton and Oakdale to Hickman and return, who, on arrival at Peters, an intermediate point between Stockton and Oakdale, was required to make a trip off of assigned territory to Milton for stock, and handle it to Stockton, then return to Peters and complete assignment. This settlement applied to a particular case, and was accepted on that basis.

Settlement covered by Co. File E&F 150-11—Org. file F-2497-20, covers a case of an engineer and fireman assigned to roostabout service who were required to perform work train service in addition to service on assign-
ment. Claim for an additional 100 miles was allowed under a rule of agreement applying exclusively to roustabout service, as follows:

"Passenger service, helper service and work train service will not be included in roustabout assignments."

The claimant was not assigned to roustabout service; there is no such rule applying to turnaround local freight service.

Assuming that the petitioner will, if these settlements are referred to in its position, submit copies thereof as exhibits, the carrier will refrain from making exhibits of said settlements, in order to avoid unnecessary duplication. It will be observed that not one of the settlements deal with the issue here in dispute.

Decisions 4409 to 4426, inclusive, Train Service Board of Adjustment for the Western Region, referred to by general chairman, involved turnaround assignments coming within the scope of Article 6, Section 6 of the agreement covering engineers in effect at the time. It had not been the practice to specify the number of trips in bulletin; terminal and turning points only were named. Claims were made for a minimum of 100 miles for each trip made out of terminal of assignment. The Board in each of these decisions stated:

"The evidence indicates that controversy arose some 3 or 4 years subsequent to revision of Article 6, Section 6-A, as to whether the number of trips required under an assignment should be specified in establishing the service. In view of all the facts and circumstances, the Board decides that from the date of this decision, the number of trips, as well as terminals, turning points and kind of service to which assigned, should be specified in notice of assignment. Trips other than covered by assignment cannot be compensated for under Article 6, Section 6-A. This decision not to be retroactive, and prior time claims are denied."

It is obvious that these decisions have no bearing on this case, since the bulletin of assignment specified the number of trips, named the terminal and turning points and specified the kind of service to which assigned. No trips other than specified in bulletin were made. These decisions, instead of supporting petitioner's claim, sustain the payment made by carrier, since the claimant did not make a trip not covered by agreement.

Awards Nos. 1692, 2598 and 2599. First Division, National Railroad Adjustment Board cited by general chairman, cannot be associated with the instant case for the following reasons:

Award No. 1692 involved a pooled freight engineer and fireman on the Northern Pacific who handled wrecking outfit from Glendive, a terminal, to Dickinson, the home terminal, where after arrival they were used to rerail a yard engine. Claim was made for 106.1 miles at through freight rate Glendive to Dickinson, and 100 miles at work train rate for service performed after arrival at Dickinson. Note the findings in this award, as follows:

"In view of the special circumstances in this dispute, particularly the circumstance that the carrier has settled with the train crew on a through freight basis, the Division finds that on this occasion the carrier called the train crew for through freight service from Glendive to Dickinson and that the claimants are entitled to an additional day's pay at the work train rate for the work performed at Dickinson after their arrival there."

It is obvious that said award has no bearing on the case we are discussing.
Award No. 2598 involved an extra fireman on the D&RG railroad who, after performing work train service with a derrick clearing a slide at the initial terminal, handled a freight train that had been blocked by the slide into the yard at the same terminal and was then used to switch and make up a train for the east. He was allowed a minimum day in work train service and a minimum day in yard service. The circumstances in that case are in no way related to the circumstances in the instant case; furthermore, the agreement rules referred to in said award are not comparable with the rules in effect on this property.

Award No. 2599 involves an engineer and fireman on the D&RG railroad who were used to perform yard switching and work train service at the terminal where they reported for duty. The Board sustained a claim for one yard day in addition to payment for the work train service. The carrier is at a loss to understand the organization's reference to that award as it is in no way relevant.

Even if the facts in the three foregoing awards were similar to the facts in the case now to be decided, (and they are not similar) they would be precluded from consideration since no rules are referred to therein similar to Section 4, Article 26, and Section 1, Article 12, of the current agreement covering firemen in effect on this railroad.

Carrier, on basis of evidence submitted, requests your Board to decline claim presented in this case.

EMPLOYEES’ REBUTTAL TO POSITION OF CARRIER: The Board will note that the Carrier bases its contention for the declination of the claim of Fireman R. W. Blohm on the alleged difference of opinion between the General Chairman of the Brotherhood of Locomotive Firemen and Enginemen and the General Chairman of the Brotherhood of Locomotive Engineers on rules which the Carrier contends are identical (see pages 16 and 17 of the Carrier’s submission); also on conditions as set forth in the “Memoranda of understandings in connection with the memorandum of the Director General, dated November 15, 1919, in regard to conditions under which time and one-half for overtime would be granted in freight service,” which also contained the “Understandings reached in conference held at Washington, D. C., from December 2 to 13, 1819, between the Directors of the Division of Operation and Labor of the United States Railroad Administration and the chief executives of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and the Brotherhood of Railroad Trainmen, accompanied by a special committee composed of general chairmen of the respective organizations” (see pages 12 through 14 of the Carrier’s submission).

It will be noted by the Board that Carrier’s Exhibits “A” and “B” pertain to the B.L.E. Agreement and have no bearing on the application of the B.L.F.&E. Agreement. Your attention is particularly directed to concluding paragraph of Carrier’s Exhibit “B”, sheet 2, Company file E&F 191-279, reading:

“Specific claims of record pending as of August 29, 1947, and future claims of the same kind shall be disposed of on the basis of this agreement.” (Emphasis ours.)

which is tantamount to a rule change in the B.L.E. Agreement and therefore not comparable to the provisions of the B.L.F.&E. Agreement.

Further, in connection with the difference of opinion of the two General Chairmen in the application of similar provisions of the separate agreements, your attention is directed to the difference of opinion as expressed on the application of the roustabout rule—Article 20, B.L.F.&E. Agreement, and Article 19, B.L.E. Agreement—as evidenced by settlement agreed upon between former B.L.E. General Chairman P. O. Peterson and Assistant to General Manager R. McIntyre under date of January 17, 1935, reading as follows:
Mr. R. McIntyre
Asst. to General Manager
Southern Pacific Company
San Francisco, California

Dear Sir:

ORG. FILE E-4091; CO. FILE E&F 150-36.

ENGINEERS' ARTICLE 19.

Reference your letter of January 12, 1935, reading:

"Referring to your letters August 22nd, and December 29, 1934, also conference held December 4, 1934, concerning claim of Engineer W. B. Clark, San Joaquin Division, for additional compensation, November 12th, 1930, account being brought on duty on roustabout assignment, Porterville, in advance of bulletined starting time.

"STATEMENT OF FACTS: Engineer Clark was holding assignment during life of bulletin reading as follows:

"L-91—Roustabout service daily. Terminal Porterville, turning points Famosa. Must be qualified for Minkler Southern. Starting Time 5:00 P.M."

On November 12, 1930, Engineer Clark was called to report for duty at 3:35 P.M. and was released at 7:30 A.M., November 13, 1930.

Was compensated on a continuous time basis, 3:35 P.M., November 12th, to 7:30 A.M., November 13th, 1930.

Claim submitted for 100 miles for service performed 3:35 P.M. to 5:00 P.M., November 12th, and 100 miles and overtime for service performed, 5:00 P.M., November 12th, to 7:30 A.M., November 13th, 1930.

CONCLUSION: As agreed, claim of Engineer Clark and pending and future cases involving the same principle will be disposed of in accordance with basis outlined in the following Examples:

EXAMPLES

No. 1. Time specified in bulletin to commence work

Engineer brought on duty
Released
Assignment confined to radius of 100 miles

COMPENSATION: 100 miles and 3 hours overtime at 3/16ths of the daily rate.

No. 2. Time specified in bulletin to commence work

Engineer brought on duty
Released
Assignment confined to radius of 100 miles

6:00 A.M.
4:00 A.M.
3:00 P.M.
6:00 A.M.
3:00 A.M.
1:00 P.M.
COMPENSATION: 100 miles and 3 hours at 3/16th of the daily rate

No. 3. Time specified in bulletin to commence work  
Engineer brought on duty 6:00 A.M.  
Released 4:00 A.M.  
Assignment confined to radius of 120 miles  
2:00 P.M.

COMPENSATION: 120 miles, 2 hours overtime at 3/16th of the daily rate

No. 4. Time specified in bulletin to commence work 6:00 A.M.  
Engineer brought on duty 3:00 A.M.  
Released 3:00 P.M.  
Assignment confined to radius of 120 miles  
COMPENSATION: 120 miles, 3 hours at 3/16ths of the daily rate, 3:00 A.M. to 6:00 A.M. and 1 hour overtime at 3/16ths of the daily rate, 2:00 P.M. to 3:00 P.M.

‘With reference to that part of your letter December 29, 1934,  
‘With reference to that part of your letter December 29, 1934, reading:

“—and, further, if the starting time is changed two hours or more the assignment will be rebulletined as provided—”

‘It is not intended that the above Examples will in any way abrogate the provisions of Engineers’ Agreement with respect to rebulletining roustabout assignments when there is a bona fide change in starting time of two hours or more, as it would be a natural procedure on the part of the Company to avail itself of this right to eliminate the penalty set forth in these examples.”

“Your decision is in accordance with understanding reached in conference and is accepted, provided of course that it does not change the provisions of Decision Nos. 4456, 4457, Train Service Board of Adjustment for the Western Region, reading:

‘The Board understands Article 19, Section 1 (b), requires a definite starting time to be specified, also that starting time may be changed by bulletin whenever necessary; therefore, claim is sustained.’

The claims covered by the foregoing decisions being those of engineers called for service subsequent to the specified starting time, time would be computed from the bulletined starting time.

Yours very truly,

(Signed) P. O. Peterson

GENERAL CHAIRMAN, B. L. E.”

On April 22, 1935, this settlement was offered to former B. L. F. & E. General Chairman W. E. Jones but was rejected by B. L. F. & E. Acting General Chairman C. W. Moffitt in his letter of June 6, 1935, reading as follows:
“San Francisco, California
June 6, 1935
Org. file F-3816-20
Co. file E&F 14-40

Mr. R. McIntyre
Asst. to Gen’l Manager
Southern Pacific Company
San Francisco, California

Dear Sir:

Please be referred to our exchange of correspondence and conferences closing May 23, 1935, in the claim of Fireman M. A. Long, San Joaquin Division, for an additional 100 miles each date, November 24, 26, 27, 28, 30, December 1, 3, 4, 5, 6, 7, 8, 10 and 11, 1928, when called in advance of his regular starting time in roustabout service... your file E&F 14-40.

This to advise that I can not accept proposal made in your letter April 22, 1935, and if you are not agreeable to accepting my proposal, submitted to you March 12, 1935, this case will be continued for hearing and decision by Division No. 1 of the National Railroad Adjustment Board.

Please advise.

Yours truly,

(Signed) C. W. Moffitt

CWM:IVJ ACTING GENERAL CHAIRMAN, BLF&E"

The B. L. F. & E. General Chairman’s contention was subsequently sustained by your Division in Award 947 of February 26, 1936, and it was applied to the provisions of the B. L. E. Agreement, as evidenced in Assistant to General Manager R. McIntyre’s letter of March 27, 1936 to B. L. E. General Chairman, reading as follows:

“San Francisco, California
March 27, 1936
Org. file E-5028
Co. file E&F 150-47

Mr. P. O. Peterson
General Chairman, B. L. E.
Pacific Bldg., San Francisco.

Dear Sir:

With reference to my letter of May 28, 1935, reading:

‘Referring to your letter May 8, 1935, and conference held May 24, 1935, in regards to changing the starting time of roustabout assignments.

It was agreed in conference that if the starting time of roustabout assignments is set ahead less than two hours for a period of 10 days or more, that engineers will be given 24 hours advance notice in writing of the changed starting time. Should starting time be set back, provisions of Train Service Board for the Western Region, Decisions 4456 and 4457, or provisions of Article 32, Section 10 (b), Engineers’ Agreement will apply, as the case may be.’

It was agreed in conference March 25, 1936, that the above quoted understanding would be cancelled and that henceforth the
provisions of Award No. 947, Division No. 1, National Railroad Adjustment Board, will govern.

It was also agreed that whatever retroactive adjustments are made under Award No. 947 will be applied to engineers as well as firemen.

Yours truly,

(Signed) R. McIntyre
ASSISTANT TO GENERAL MANAGER
SOUTHERN PACIFIC COMPANY

cc-Mr. W. E. Jones, BLF&E”

In Awards 942, 1325, 1333, 3857 and others of the First Division, National Railroad Adjustment Board, sustaining the contention of B. L. F. & E. General Chairman on the proper application of the B. L. F. & E. Agreement, the B. L. E. General Chairman subsequently reached settlements with the Carrier applying the decisions in these awards to the comparable provisions of the B. L. E. Agreement, as evidenced by the following correspondence; therefore, the Carrier’s position that a difference of opinion exists between the General Chairmen is untenable:

“San Francisco, California
March 27, 1936
Org. file E-3807
Co. file E&F 155-271

Mr. P. O. Peterson
General Chairman, BLE
Pacific Bldg., San Francisco

Dear Sir:

Referring to your file E-3807, Company file E&F 155-271, regarding Mediation Agreement Case GC-1212 involving claim of Engineer C. W. Bradley, San Joaquin Division, for 1 hour 40 minutes initial switching at Coalinga, January 1, 1929. Mediation Agreement reads:

‘CASE GC-1212

Following settlement reached in Mediation Case GC-1212, involving claim of Engineer C. W. Bradley, San Joaquin Division, for 1 hour 40 minutes initial switching at Coalinga, January 1, 1929.

STATEMENT OF FACTS: Engineer Bradley was assigned to local freight service, Goshen Junction-Coalinga, (daily except Sunday), tying up one night at Coalinga, and the next at Goshen Junction.

Coalinga is an outside point where yard crews are not employed, and on January 1, 1929, Engineer Bradley was required to make up his own train. Started switching 2:55 A.M., and, in the process of this work, switched 1 hour 15 minutes (2:55 A.M. to 4:10 A.M.), which included coupling train together, departing point in yard where train is usually made up at 4:15 A.M. Moved train a distance in excess of one-half mile beyond designated main track switch from which terminal delay is computed, where he stopped at 4:20 A.M. and switched until 4:35 A.M., which included coupling train together, and departed terminal 4:36 A.M.

Was allowed 50 minutes initial switching. (Should have been allowed 1 hour 15 minutes initial switching.)

Claim is made for 1 hour 40 minutes initial switching.
It will be noted, Engineer Bradley was assigned to local freight service, and, there being no yard crew employed at Coalinga, he was required to make up his own train, and, as the distance train was moved between points switching was performed was in excess of one-half mile beyond designated main track switch from which terminal delay is computed, it is agreed Engineer Bradley will be allowed initial terminal switching computed from 2:55 A. M. to 4:10 A. M., and, in addition thereto, from 4:20 A. M. to 4:35 A. M. (or a total of 1 hour 30 minutes) January 1, 1929.

Pending and future claims will be disposed of in accordance herewith.

This agreement will continue in effect until thirty days’ notice has been served, in writing, by either party on the other, of a desire to change same.

CONCLUSION: In view of the fact that Division One, National Railroad Adjustment Board, in its Award No. 942 sustained a like claim of Fireman A. C. May for 2 hours 11 minutes initial switching February 4th and 1 hour 25 minutes initial switching February 6, 1929 in Coalinga Yard, I am agreeable to cancelling Mediation Agreement Case CG-1212, and henceforth compensating engineer performing like service under the provisions of Award No. 942 of the National Board.

As stated to you in conference, March 25, 1936, the Company will make the same retroactive adjustments under Award No. 942 in favor of engineers as will be made in favor of firemen.

Yours truly,

(s) R. McIntyre
Assistant to General Manager
SOUTHERN PACIFIC COMPANY.

cc—Mr. W. E. Jones, BLF&E"

* * * *

"San Francisco, California
August 13, 1936
Org. file E-5535-13-1
Co. file E&F 176-157

Mr. P. O. Peterson
General Chairman, BLE
Pacific Bldg., San Francisco.

Dear Sir:

Referring to your letter August 7, 1936, quoting my letter of March 26, 1930, addressed to former Superintendent, Mr. C. M. Murphy, San Joaquin Division, in connection with mixed train assignment for enginemen operating Mojave-Owensyo-Cartago-Owensyo, and your request that Award No. 1325, Docket 857, National Railroad Adjustment Board, First Division, covering claim of firemen on this assignment, be applied to engineers, and that check-back be made under the provisions of the Award for engineers to March 23, 1930.
Inasmuch as Article 13, Section 1, Engineers' Agreement corresponds with Article 2, Section 1, and Article 19, Section 1, Firemen's Agreement, will afford engineers the same adjustment as is made for firemen under Award No. 1325, National Railroad Adjustment Board, First Division.

Yours truly,

(s) R. McIntyre
Assistant to General Manager
SOUTHERN PACIFIC COMPANY

cc—Mr. C. W. Moffitt, BLF&E"

* * * *

"San Francisco, California
September 14, 1936
Org. file E-4635
Co. file E&F 125-161

Mr. P. O. Peterson
General Chairman, BLE
Pacific Bldg., San Francisco

Dear Sir:

Referring to your letter August 19, 1936, replying to mine August 12th, also conference held September 11, 1936, in connection with applying Award No. 1333, National Railroad Adjustment Board, First Division, to engineers who worked on trains 350-353-354, Santa Barbara-Los Angeles-Oxnard, on February 13, 1933 and subsequent dates.

STATEMENT OF FACTS: On February 13, 1933 and subsequent dates, engineers handling trains 350-353-354, Santa Barbara-Los Angeles-Oxnard, were compensated on a continuous time basis from time reporting for duty at Santa Barbara until time released from duty at Oxnard, based on the combined schedules of train No. 350, Santa Barbara-Los Angeles, and trains 353-354, Los Angeles to Oxnard.

Claim is made for 104 miles and overtime after schedule of train No. 350, Santa Barbara-Los Angeles, and 100 miles and overtime after schedule of five hours on trains 353-354, Los Angeles-Oxnard, with check-back to February 13, 1933.

CONCLUSION: As agreed in conference, will allow engineers who handled run in question, 104 miles and overtime after schedule of train No. 350, Santa Barbara to Los Angeles, and 100 miles and overtime after five hours, trains 353-354, Los Angeles-Oxnard, on the basis of Award No. 1333, National Railroad Adjustment Board, First Division. Check-back under this settlement will be made retroactive to February 13, 1933, date of claim covered by Award No. 1333.

Yours truly,

(s) R. McIntyre
Assistant to General Manager
SOUTHERN PACIFIC COMPANY.

cc—Mr. C. W. Moffitt, BLF&E"

* * * *
Mr. P. O. Peterson  
General Chairman, BLE  
Pacific Building  
San Francisco, California  

Dear Sir:

Referring to your letter of October 20, 1937, and subsequent correspondence which have reference to claims of engineers assigned to trains Nos. 820 and 819, between Los Angeles and Calexico for payment on a two-trip basis.

This case was discussed with you and General Chairman, Mr. C. W. Moffit, BLF&E, on January 24, 1940.

FACTS: Train No. 820 is shown in Los Angeles Division timetables No. 162 to No. 173, both inclusive, from Los Angeles to Calexico; train No. 368 is shown in timetables No. 174 and No. 175 from Los Angeles to Niland. Train No. 819 is shown in Los Angeles Division timetables No. 162 to No. 173, both inclusive, from Calexico to Los Angeles; train No. 367 is shown in timetables No. 174 and No. 175 from Niland to Los Angeles.

During period June 21, 1934 to April 3, 1939, engineers who handled train No. 820, operating from Los Angeles to Calexico, and train No. 819, operating from Calexico to Los Angeles, daily, through Indio, a division terminal, were compensated on a continuous trip basis.

During period April 4, 1939 to June 19, 1939, both dates inclusive, engineers who handled train No. 820, April 4 to May 6, and train No. 368, May 7 to June 19, operating from Los Angeles to Niland, and train No. 819, April 4 to May 6 and train No. 367, May 7 to June 19, operating from Niland to Los Angeles, daily, through Indio, a division terminal, were compensated on a continuous trip basis.

Claim made by engineers operating trains No. 820 and No. 819 for 130 miles between Los Angeles and Indio and 100 miles between Indio and Calexico; and by engineers operating trains No. 368 and 367 for 130 miles between Los Angeles and Indio, and 100 miles between Indio and Niland, plus initial and terminal switching and terminal delay, if any, at Los Angeles, Indio, Calexico and Niland, contending that engineers were required to operate through Indio, a division terminal, on an assignment between points other than those specified in Article 31, Section 1, Engineers’ Agreement.

CONCLUSION: As was agreed with you in conference January 24, 1940, engineers who operated trains No. 820 and No. 819 between Los Angeles and Calexico, period June 21, 1934 to April 3, 1939, trains No. 820 and No. 819 between Los Angeles and Niland, April 4 to May 6, 1939, and trains No. 368 and No. 367 between Los Angeles and Niland, May 7 to June 19, 1939, through Indio, a division terminal, will be compensated on a two trip basis, computing first trip from the time brought on duty until departure Indio in direction bound on succeeding trip, check back to include initial and final terminal roundhouse miles at Los Angeles, Niland and Calexico, final terminal delay at Los Angeles, Indio, Niland and Calexico, and terminal switching at Indio, Niland and Calexico, if any is payable under the Engineers’ current Agreement. From
this allowance will be deducted compensation previously allowed, period June 21, 1934 to June 19, 1939.

Yours truly,

(s) R. E. Beach
Asst. Manager of Personnel
SOUTHERN PACIFIC COMPANY.

cc—Mr. C. W. Moffitt

* * * *

In connection with the Memoranda of Understandings with the Director General of November 15, 1919, said Memoranda did not preclude any future negotiations for more favorable conditions or more liberal interpretations being placed on existing rules. That such settlements and interpretations were subsequently reached is evidenced by the exhibits attached to the Employees' submission.

The Carrier contends for a line of demarcation to distinguish between station work and road work—see page 16 of the Carrier's submission. This contention, that the service was performed within station limits, is not sustained by any agreement provisions. The work performed, in itself, establishes the difference. The unloading of slag, or the performance of other work train service, is just as much work train service between mile posts at a given station as it would be beyond the mile posts. Work train service was not specified in the assignment.

Decisions and awards referred to by the Carrier, pages 14 and 15 of their submission, are not governing in the instant case. Decision 1007, Train Service Board of Adjustment for the Western Region, applied only to a particular case. Award 11922 was based on a B.L.E. Agreement differing from the B.L.F.&E. Agreement here involved. Awards 6116, 6667, 6669, 6748 and 9573 were based on agreement provisions which are not similar. Award 8288 was based on both different factual circumstances and agreement provisions.

The Carrier contends that the Organization is endeavoring to procure two days' pay for one day's work—see page 15 of the Carrier's submission. Unassigned work train service is allocated to the extra list of firemen under the provisions of Section 3, Article 37, SP Firemen's Agreement, that part reading:

"Firemen assigned to the extra list shall be run first-in first-out of the terminal where assigned, working on all vacancies, runs and trips not otherwise provided for. If filling vacancy or augmenting pool, firemen shall be returned to point where assigned to extra list before being displaced from the run. Ordinarily extra lists will be maintained only at division or district terminals and effort will be made to fill all vacancies or new runs, not otherwise provided for, from these lists. When necessary, extra lists may be established at outside points where assigned runs terminate, or at an assigned helper station, but they will be maintained only for such time as the earnings of firemen thereon average the equivalent of six hundred miles per week. Such extra lists will not be established for less than ten days.

Where extra men are assigned to an outside point as provided above, such point will be considered as their home terminal and they will be used to fill vacancies or perform extra work assigned to such extra list. If firemen thus assigned are run to division or district terminals in extra service where extra list is maintained, they will, upon arrival at a division or district terminal, be promptly deadheaded to their assigned territory or run back on light engine after required rest period without runaround penalty.
If there are no men available at such point who are entitled to the work, men may be returned to their assigned territory in service."

What the Organization is endeavoring to do is to prevent the Carrier from compensating a fireman by one day's pay for two days' work.

The Carrier's reference (page 9 of their submission) to station tracks at Elmira which parallel the westward main tracks to a point opposite Mile Post 58.8 is a subterfuge to obscure the issue and has no bearing on the instant case, as this track has no connection with either main track at Mile Post 58.8.

On page 12 of the Carrier's submission reference is made to the application of the "Combination of service" or "Two or more classes of road-service" rule. That such a rule is not applicable in the instant case is substantiated by the findings of the Board in an analogous case in Award 11570, referred to on page 7 of the Employes' submission.

We again request that the Board sustain the claim of Fireman R. W. Blohm for 100 miles and 5 hours 5 minutes overtime for service performed on turnaround local freight assignment and 100 miles for work train service performed outside of his assignment, October 3, 1943.

* * * *

CARRIER'S REPLY TO POSITION OF EMPLOYEES: On Page 4, Employes state in part:

"Claimant performed 1 hour 40 minutes work train service which constitutes a day's work according to Section 1, Article 16, quoted above."

It is true that had the claimant been called for and performed 1 hour 40 minutes work train service and was then released from duty, the 1 hour and 40 minutes service would have constituted a day's work under Article 16, Section 1, but those are not the facts in this case; the claimant performed work train service while en route on his assignment which does not constitute a separate day's work under Section 1, Article 16, as is definitely evidenced by Section 4, Article 26, and Section 1, Article 12, quoted and discussed in Carrier's Position. Section 1, Article 16, applies to all classes of service covered by Article 13, hence, if there was merit to employees' contention (which there is not), it would preclude the application of Section 1, Article 12 (combination of services rule) to all classes of service paying freight rates. This also conclusively establishes that Section 1, Article 16, does not support the instant claim.

On pages 4 and 5, Employes quote Section 3, Article 2, of the current agreement and state:

"The Board will note that Item (5) of Section 3, quoted above, definitely distinguishes between a trip in work train service and a trip in straightaway or turnaround freight service. A trip in straightaway freight service is ended when fireman reaches the division or district terminal. In turnaround freight service, a fireman must be called to make one or more trips within certain limitations specified in Section 3 of Article 2, quoted above."

The carrier is at a loss to understand Employees' reference to Section 3, Article 2, and their specific reference to Item 5 thereof, since that entire agreement provision relates to firemen or helpers in pool or irregular freight service who are called to make short trips and turnarounds from a terminal, and specifies the conditions under which more than one trip of that character may be started out of the same terminal on a continuous payment basis. It has nothing whatever to do with the claim being discussed.
On page 6, Employes state:

"Section 4, Article 26, quoted above, refers to the use of road service firemen in work train service only in emergencies, in accordance with Article 22, SP Firemen's Agreement, . . . ."

Section 4, Article 26, consists of two sentences. The first sentence could not be more definite in providing that firemen leaving terminals in road service and used in work train service en route are not subject to work train rules; it makes no mention of emergencies but applies to all such cases. The second sentence provides that the use of road firemen en route in work train service will conform to the provisions of Article 22 (quoted by Employes on page 6) when conditions specified in Article 22 obtain. In the instant case the conditions specified in Article 22 did not obtain; therefore, the first sentence of Section 4, Article 26, is the only part of said rule which applies to this case. It clearly nullifies the claim.

On page 7, paragraph 1, the Employes state in part:

"However, even in cases of wrecks the agreement does not permit the use of assigned firemen to perform work train service without the penalty of runarounds paid to extra firemen. The Board will observe that the note following Section 3, Article 14, quoted herein, describes how runarounds are disposed of when assigned firemen are used in work train service account of wrecks."

The case being discussed does not involve a wreck, nor does it involve a claim for a runaround penalty by an extra fireman, hence the above-quoted portion of the Employes' Position is not relevant; however, the carrier desires to take exception to that part of the Employes' statement that "even in cases of wrecks the agreement does not permit the use of assigned firemen to perform work train service without penalty of runarounds paid to extra firemen," as that statement is not correct. The note following Section 3, Article 14, to which the Employes refer in support of this statement is as follows:

"Note: In cases where main track is obstructed due to derailments, engine failure, break-in-twos, and traffic is threatened with serious delay and assigned crews under this Article are used to assist in relieving obstruction, question of runarounds will be disposed of on their merits between representatives of the Company and firemen." (Emphasis supplied.)

The above is self-explanatory and definitely refutes the statement of the Employes.

On page 7, paragraph 2, the Employes state:

"The Board will also observe that Section 6, Article 26, quoted herein, provides that extra firemen should protect work train service. There were extra firemen at Oakland available for work train service, but they were not called." Section 6, Article 26, provides:

"When unassigned work trains are tied up at outside points where extra lists are maintained, they should be manned from such extra lists. However, when extra men in unassigned work train service are tied up at outside points where an extra list is maintained, they should remain in that service unless it is known that work train will be tied up thereafter only at that point, in which case crew from other extra list will be released and service manned from the extra list where crew ties up."

It will be noted that the quoted rule merely provides how unassigned work trains will be handled that are tied up at outside points where extra
lists are maintained. This rule has no bearing on the question here in dispute, but relates to firemen called for and used in work train service and subsequently tied up in such service at outside points where extra lists are maintained. That is a circumstance entirely different to that of a fireman leaving a terminal in road service and performing work train service en route. The carrier again directs attention to Award No. 11583 of this Division, which has been entirely disregarded by the Employes, and which definitely recognizes the application of Article 26, Section 4, as applied in this case. Merely as a matter of information, Elmira, where the small amount of work train service was performed by the claimant in connection with his assignment, is 58.9 miles distant from Oakland.

On page 7, the Employes, after quoting Sections 1 and 2, Article 12, of the current agreement, state in part:

"It is the Employes' position that Article 12 does not apply to classes of service which pay the same rate enumerated in Section 1, Article 13, quoted herein, but is applicable in converting a lower rate to a higher rate, such as passenger service to freight; freight to local freight; valley rates to mountain rates, or small engines to a large engine rate. The Board will note that these conditions are not mentioned in Section 1, Article 13."

The Employes' statement that Article 12 does not apply to classes of service which pay the same rate enumerated in Section 1, Article 13, is not pertinent in this case, since two different rates were involved, the work train (through freight) rate and the local freight rate, which latter rate is higher than the through freight rate. However, had the rates for the two classes of service performed been the same, continuous time payment under Article 12 would still be proper, and in this connection carrier again directs attention to Question 1(a) and Answer of Understandings reached in conference held at Washington, D. C., from December 2 to 13, 1919, between the Divisions of Operation and Labor of the U. S. Railroad Administration and the chief executives of the BofLE, BoFL&E, ORC and BofRT, accompanied by a special committee composed of general chairmen of the respective organizations quoted in carrier's position; also to recent Award No. 11922 of this Division, which is exactly in point. The Employes' assertion that Article 12 is applicable only in converting a lower rate to a higher rate is not correct. It applies in all cases where two or more classes of service are performed on the same day or trip; however, in the instant case the lower work train rate for work train service performed at Elmira was converted to the higher local freight rate applicable to balance of service performed.

On page 7, Employes state:

"The Employes' position that work train service and freight service can not be combined has been sustained on this property, against strong argument by the Carrier to the contrary, in Awards 11416, 11570 and 11746, First Division, National Railroad Adjustment Board."

Award 11416 covers a case of an engine crew in mixed train service who, upon arrival at Wheeler, the final terminal of their assignment, were required to perform work train service before going off duty. The Board stated that when the claimants arrived at Wheeler they had completed their daily assignment within the meaning of Article 13 (1) of the Engineers' Agreement and Article 2 (1) of the Firemen's Agreement, and on that basis sustained claim for 100 miles for work train service performed after completing assignment under Article 2 (1) of the Engineers' Agreement and Article 16 (1) of the Firemen's Agreement.

Award 11570 involves the case of a fireman and Award 11746 involves the case of an engineer who performed the same service. This engine crew, assigned on date of claim to local freight service, one trip Tracy to Merced
and one trip Merced to Athlone and return, operated on assignment from Tracy to Merced, then were used in work train service from Merced to MP 156 (a point short of Athlone) and return, after which crew went off duty at Merced. In these two awards the Board stated:

"The Combination Service Rule is not applicable here. Claimant was assigned to turnaround local freight service. He was required to also perform work train service which was outside of the particular assignment he was then called upon to fill. **He began a new day when he left Merced in work train service.**" (Emphasis supplied.)

It will be noted that in all three of these awards the claimants had completed their daily assignment at the final terminal thereof before being injected into work train service. Therefore, those awards deal with an entirely different circumstance than that involved in the instant claim, since the claimant in the instant case did not perform any work train service after completing his daily assignment but performed such service en route at an intermediate point between terminals while operating on his assignment.

On page 7, paragraph 3, Employes further state:

"The Employes' position has been further supported by your Board in the following Awards: 1990, 4053, 4141, 6675, 6676, 6677, 7519, 7520, 7521, 7522, 9270, 9301, 11368, 11388, 11431, 11693 and 11694."

The awards above cited are foreign line awards. The carrier will briefly discuss each of these awards:

Award 1990—The claim in this award was sustained under an agreement rule that is not similar to any provision of the current agreement in effect on this property. No rules were cited by carrier in that case similar to those on which this carrier relies.

Award 4053—The claim was sustained on basis that the combination of services rule is not authority for combining two classes of service within a terminal.

Award 4141—This case covered by this award involves a lap back trip in work train service by an engineer operating in pool freight service. Rules cited in support of claim are not comparable with rules in effect on this property.

Awards 6675, 6676 and 6677—The Board in sustaining claims stated the combination of service was within a terminal and that the combination rule is not authority for combining two classes of service within a terminal.

Awards 7519, 7521 and 7522—The Board in sustaining these claims cited Awards 6675, 6676 and 6677 referred to next above as authority for its findings. In Award No. 9573, this Division, with the aid of Referee Fred L. Fox, states in part:

"Award 7519 is based on the three awards last cited above (Awards 6675, 6676 and 6677), although it is not clear that the facts were the same."

Award 7520—The claimant in this award did not perform service. This award involves a claim for penalty compensation account claimant not being called from a terminal extra list for the work train service performed by the claimant in Award 7519. (See previous comment.)

Award 9270—Covers a crew assigned to work train service who, during their tour of duty on assignment, were required to move a damaged car set
out of a freight train 11 miles from one station to another station for repairs. No rules were cited by carrier comparable with rules in effect on this railroad.

Award 9301—The rule cited by petitioner in this award is different from any rule in effect on this property. No rule was cited by carrier similar to rules on which we rely.

Award 11368—Board stated combination service rule not authority for combining two or more classes of service within a terminal.

Award 11388—Deals with an engine crew in work train service who were required while en route to final terminal, to pick up a car of stock and handle it a distance of 10 miles to final terminal.

Award 11431—Covers a case of a fireman on an assigned work train who was used before reaching his work train terminal, to operate on an assigned local freight train from an intermediate point to his final terminal, account firemen of the assigned local freight having been overtaken by the Hours of Service Law.

Award 11693—No rule was cited by Carrier similar to Article 26, Section 4, of the current agreement.

Award 11694—The facts in this case are conflicting; however, we quote from Position of Employes:

"From the rules and settlements cited it is plain that this carrier is trying to place an interpretation on the work train rules contrary to the agreement and all past settlements above cited.

We would call attention that Section A of Article 6 above quoted prohibits the through freight rules from applying to work train until engineer has been on work train more than three days." (Emphasis supplied.)

Southern Pacific current agreement does not contain a provision comparable with Section A, Article 6 of the agreement referred to in above quotation.

None of the above awards can be properly considered applicable to a fireman on this railroad who leaves a terminal in road service and performs work train service at an intermediate point en route under the specific provisions of Article 26, Section 4 of the current agreement; furthermore, if Article 26, Section 4, were not a part of the current agreement, none of these awards, according to our analysis thereof, would, in view of other rules in effect on this property cited in Carrier's Position, sustain a payment other than continuous time at the highest rate of pay under Article 12, Section 1 of said agreement.

On page 8, paragraphs 1, 2, 3, 4 and 5, the Employes further state:

"The Board's attention is directed to Awards 6164, 6427, 7154, 8882, 8896, 9738, 10185, 10903 and 11438 which prohibit the combination of freight and wrecker service.

Awards 1971 and 1989 prohibit the combination of freight and snow service.

Awards 1739, 1746, 3235, 3482, 4440, 10648, 10663, 11551 and 11660 prohibit the combination of helper and freight service.

Awards 12198 and 12199 prohibit the combination of messenger and helper service.

Award 5571 prohibits the combination of mine run and helper service."
With the exception of those awards hereinafter shown as Southern Pacific (Pacific Lines) awards, all of the above referred to awards involve foreign railroads.

Award 6164—Claim was declined under a provision of agreement not in effect on this railroad, providing that wrecking service shall be paid for irrespective of other service performed on same date.

Award 6437—Involves a train crew called at initial terminal for a freight train but who were started out of terminal with an engine and caboose to take a doctor to meeting point with train handling foreman of a wrecking outfit who had been injured while working at a wreck. After transferring the doctor to caboose which was bringing injured foreman to hospital, the train crew (claimants) were ordered to continue to point of wreck to relieve crew handling wrecker account Hours of Service Law. This crew left their caboose at a point called Gerlach (MP 438) and proceeded to point of wreck (MP 445) by motor car. Crew claimed 117 miles at through freight rate from initial terminal to point where they boarded motor car, 7 deadhead miles at same rate for traveling on motor car, and 100 miles at work train rate for wrecking service performed, which was sustained.

Award 7154—Claim was sustained under an agreement rule providing that conductors (trainmen) in wreck service and handling wrecking outfit will not be required to handle revenue cars except cars that were in the train that was wrecked and in condition to be moved.

Award 8882—Claim was sustained under an agreement rule providing that enginemen in work train service will not be required to handle revenue cars, except the cars that were wrecked and in condition to be moved, and bad order cars that may be put in condition to be moved by wreck train en route.

Award 8896—Covers case of a train crew who were called for local freight service, who, before completing makeup of their train, were used at initial terminal to reeail cars.

Award 9738—Claim sustained under Award 8882, above listed.

Award 10185—Covers a train crew assigned to pool freight service who were used out of terminal for wreck service and proceeded to an intermediate point for such service. At the completion of wrecking service they operated to another intermediate point, picked up train of freight cars and returned to terminal where service was started.

Award 10903—Claim was sustained under an agreement rule identical to that on which the claim in Award 8882 above listed was sustained.

Award 11438—Covers case of an engine crew in pool freight service who were used en route at a helper terminal to recall the helper engine which was to be used to help their train. The Board, with the aid of Referee Colonel Grady Lewis, sustained claim for an additional 100 miles, stating:

"By authority of a long list of awards of this Division, this claim is valid as being work outside the assignment which this crew was called to fill."

In this case the carrier cited the combination of services rule. This carrier has been unable to locate any of the awards of this Division referred to in the above findings, that sustained a claim for an additional 100 miles under the circumstances involved.

Award 1971—Involves an engineer who was assigned to and departed in way freight service. Engine used by this engineer was equipped with flangers to clear snow from the rails and during the course of his trip he manipulated the flangers when necessary on main line and passing tracks.
The Board stated that the use of assigned crew in flanging service was not necessary in the movement of their train, or work in connection therewith, but was service performed in addition to assignment.

Award 1989—Claim sustained under rule providing that conductors assigned to regular runs shall not be given work other than that to which they are regularly assigned, except in cases of wrecks, snow blockades, washouts and damaged bridges, when no other conductors are available.

Award 1739—Involves engine crew in local freight service who were required while operating on assignment to help a train account no regular helper crew available, return with light engine and then resume service on assignment. Claim was sustained under an agreement provision not contained in the S. P. current agreement, although such a claim would be payable on this property under Award 11551.

Award 1746—Claim sustained under agreement rule providing that when engineers (firemen) in pusher service are used in other than pusher service which is not in connection with train being assisted, they will be paid not less than a minimum day for such service.

Award 3235—Covers case of conductor, assigned to through freight run, who was temporarily diverted from assigned territory and inducted into helper service on a designated helper district. Claim for 100 miles helper service sustained under helper service rule in effect on property involved.

Award 3482—Covers case of a fireman in regular pusher service who was used from his pusher terminal to take an engine to an intermediate point for the relief of a disabled engine on a freight train; he then handled said freight train to his pusher terminal, after which he was used in pusher service.

Award 4440—Claim sustained on basis of an improper bulletin which did not definitely specify the number of helper trips to be made on a combination local freight and helper assignment.

Award 10648—Claim sustained account crew assigned to through freight service used in pusher service from one of their terminals, which service should have been performed by a switching assignment under a specific provision of the agreement in effect on the railroad involved.

Award 10663—Claimants in assigned freight service on a straightaway basis, were, at an intermediate point, instructed to proceed with their engine light to another point and assist another train traveling in a direction opposite to the direction of the claimant's assigned run.

Award 11551 (S. P. Pacific Lines award)—The Board decided that trips by firemen in helper service cannot be considered within a continuous trip in pool freight service.

Award 11660—Covers claim of a helper engineer for penalty compensation when other than a helper engineer was used to doublehead a train, on basis that doubleheader service was not a terminal to terminal movement.

Awards 12198 and 12199 (S. P. Pacific Lines awards)—Board held that messenger service performed by assigned helper firemen during the course of their day's work should be paid for separately from helper service allowance, presumably under an agreement rule providing that firemen assigned to helper service exclusively and used in any other service will be paid not less than 100 miles for each time so used.

Award 5571—The findings in this award read in part:

"The operation . . . is held to have been in contravention of said special agreement . . . " (Emphasis supplied.)
The brief analysis made of the foregoing awards establishes beyond any doubt that they cannot be associated with the instant dispute.

On page 8, Employes state:

"The position of the Employes, that classes of service enumerated in Section 1, Article 13 can not be combined on a continuous time basis is further supported by settlements with this Carrier, reproduced herewith as Employes' Exhibits, wherein allowance of 100 miles was made when firemen were required to perform work not included in assignments, as follows:

Employes' Exhibits 1 through 4—apply to work train and freight service;

Employes' Exhibit 5—applies to freight and wrecker service;

Employes Exhibit 6—applies to work train and helper service;

Employes' Exhibits 7 and 8—apply to freight and messenger service;

Employes' Exhibit 9—applies to roustabout and work train service."

Employes' Exhibit No. 1 deals with a fireman who was called for an assigned work train. After completing work train service, at a point where sleeping and eating accommodations were not available, he was inducted into freight service. The Board will please note that the fireman involved was paid on a two trip basis due to the unusual circumstances and without prejudice to Article 12, Section 1 of the agreement covering firemen which was in effect at that time, and which is the same as Article 12, Section 1, of the current agreement.

Employes' Exhibit 2 covers a case of a fireman who was called for an unassigned work train. After performing work train service for several hours, he was used to relieve a fireman on a freight train who had tied up under the Hours of Service Law, and worked on said freight train to its final terminal. He was then deadheaded to Wells, an intermediate point, to resume work train service on following day, but was notified en route that the work train had been discontinued. On arrival at Wells he was released, being subsequently called on following day to handle a light engine to division terminal. The Board will please note that the additional allowance made in this case was predicated on the fact that the fireman involved did not resume work train service, and the further fact that he was informed prior to arrival at Wells from Carlin that the work train had been discontinued.

Employes' Exhibit No. 3 covers an engine crew in assigned work train service, with tie up point at Lakeside, who, after performing approximately 5 hours work train service, in vicinity of Lakeside, was instructed to make up a train consisting of two empty water cars and two bad order dump cars for movement to Ogden, a division terminal. After train was made up it was coupled to the head end of a freight train, and claimants operated on the consolidated train to Ogden. The Board will please note that the engine crew involved was paid on a two trip basis account crew having been used from tie up point of their work train to handle a freight train to division terminal.

Employes' Exhibit No. 4 covers a fireman in assigned work train service who reported for duty at the work train tie up point, Surf, and subsequently arrived at San Luis Obispo, a division terminal. After performing work train service at San Luis Obispo he was instructed to deadhead by automobile to an outside point between Surf and San Luis Obispo, and fire engine of a freight train, the fireman of which tied up under the Hours of Service Law,
from that point to San Luis Obispo. After performing this service he immediately returned to his work train assignment which he completed at Surf. The Board will please note that the claimant assigned to work train service, during his tour of duty, was used out of and into a division terminal in another class of service, which was the predicate for the allowance made.

Employees' Exhibit 5 covers a case of an engine crew, assigned to and working in turnaround local freight service, who, while en route on their assignment, were used to assist in rerailing cars of another train which obstructed main track within the yard limits of an intermediate station. The conclusion of the settlement covered by this exhibit states:

“As the types of service ‘spelled out’ following the words ‘such as’ in Article 6, Section 6 (c), of the agreement covering engineers, and Article 14, Section 3, of the agreement covering firemen, when considered in connection with the Note appended to the same agreement provisions, are illustrative of emergencies and may properly include derailments obstructing main track, I agreed in conference to allow Engineer Rix and Fireman Brewer 100 miles for service outside of assignment on account of being used to assist in rerailing cars of another train which were obstructing main track, from which will be deducted two hours of the overtime originally allowed them for service performed on February 22, 1944.

This settlement is applicable only to assignments coming within the provisions of Article 6, Section 6, Engineers' and Article 14, Section 1, Firemen's Agreements.”

The “Note” referred to in this settlement is as follows:

“Note: In cases where main track is obstructed due to derailments, engine failure, break-in-twos, and traffic is threatened with serious delay and assigned engineers (crews) under this Article are used to assist in relieving obstruction, question of runarounds will be disposed of on their merits between representatives of the company and Brotherhood of Locomotive Engineers (firemen).”

Employees' Exhibit 6 covers a fireman working in work train service, bulletined tie up point Truckee. On reporting for duty at Truckee he was used with work train engine to help another work train from Truckee to Norden, after which he performed work train service and tied up at Truckee on completion of day's work. The Board will please note that the allowance of 100 miles for helping work train from Truckee to Norden was based on the fact that the helper service from Truckee occurred at the tie up point of the claimants' work train, and the further fact that helper firemen were assigned and available at Truckee.

Employees' Exhibit 7 covers a case of a fireman assigned to straight-away local freight service who was required, before reaching final terminal of his assignment on assigned run, to messenger an engine other than his own between intermediate points, then deadhead to his final terminal. The Board will please note that part of the settlement involved, as follows:

“I stated to you in conference that since Fireman Weber was used to messenger an engine other than his own from Tigard to Hillsboro, we would consider Agreement Article 12, Section 1, not applicable to those particular circumstances and that Fireman Weber will be allowed an additional 100 miles . . .”

Employees' Exhibit 8 involves the same kind of a case as covered by Employees' Exhibit 7, and additional 100 mile payment was made on exactly the same basis.

Employees' Exhibit 9 covers a fireman assigned to roustabout service who was required to perform work train service. The additional 100 mile
payment in this case was made in accordance with a rule applicable to roustabout service only, namely, Article 20, Section 3, Item 2, of the current agreement, as follows:

"It is further understood passenger service, helper service and work service will not be included in roustabout assignments."

That the above referred to exhibits of the Employees have no bearing on the instant case is too obvious to merit discussion.

All data herein submitted have been presented to the duly authorized representative of the Employees and Carrier and are made a part of the particular question in dispute.

Oral hearing is not desired.

(Exhibits not reproduced.)

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Division had jurisdiction.

Hearing was waived.

It would serve no purpose to analyze and discuss the numerous awards of this Board concerning the applicability of the Combination of Service Rule. Many of them have been cited on the argument of this docket and they have been carefully read and considered. Despite the early conflict of authority on the subject, in recent years, through late awards of this Board, the principle has evolved that, of itself, the performance of a class of road service other than that to which an employee is regularly assigned, within the confines of the territory of his regular road assignment, does not make the Combination of Service Rule inapplicable, regardless of basic day rules covering the different classes of road service. The principle, of course, is of fairly general application because of the standard nature of the Combination of Service Rule. Exceptions to this general principle may arise because of special rules in different agreements or established practices on different properties. The problem confronting us in the instant docket is to determine whether or not certain rules in the effective agreement have indicated an intention on the part of the parties to make the Combination of Service Rule inapplicable to the performance of work train service at an intermediate point enroute on regularly assigned local freight runs.

* * * *

The employees' claim herein is based upon the contention that the claimant was required to perform a class of service outside his local freight assignment and that claimant should be compensated therefor on the basis of a minimum day in each class of service as opposed to the continuous time allowed by carrier on the basis of the Combination of Service Rule. In support of this contention employees place reliance upon (1) Article 14, Section 1, requiring, among other things, that bulletins advertising runs in the classes of assigned service set forth therein must specify kind of service to be performed (emphasis in rule) and (2) Article 14, Section 3, which provides that firemen or helpers assigned under Article 14 who are required to perform work not a part of regular assignment, such as pulling train into terminal account crew tied up under hours of service law, etc., will be paid 100 miles for each time so used in addition to assignment.

It is clear that in this instance work train service was not described in the bulletin advertising claimant's assignment. However, if it were intended
that that factor, alone, would require payment of a minimum day for performance of that service, there would be no reason for the specific enumeration in Section 3 of the article of examples of types of work for the performance of which such additional minimum days are payable. The logical conclusion is that in order to qualify for the additional minimum days required by Section 3, the work performed must be of the same kind or character as the services specified therein. It does not appear that the work train service performed by the claimant would be of that kind or character. Article 26, Section 4, lends support to this view. In any event, conceding a certain amount of ambiguity in the agreement because of seeming conflict arising on account of the wording of the Combination of Service Rule, Article 14 and Article 26, Section 4, of the agreement, the past practice of 30 years of compensating firemen in the same manner as the claimant was compensated (which practice is asserted by carrier in its submission and not denied by employees in their rebuttal) would be controlling as to the intent of the parties.

It does not appear that the work train service performed at Elmira required going off assigned territory, returning to terminal, or in any respect constituted a lapback, which factors were present in awards of this Board on this same carrier, cited by employees in support of their claim. The claim must, therefore, be denied.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October, 1951.