

**Award No. 12126**

**Docket No. 9906**

**FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD**

39 So. La Salle St., Chicago 3, Ill.

The First Division consisted of the regular members and in addition Referee Clifford W. Potter when award was rendered.

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEMEN**

**ORDER OF RAILWAY CONDUCTORS**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Engineer W. T. Porter and Fireman Goucher, Omaha Division pool crew, for a minimum day October 26, 1937, when an assigned local freight crew which operated between Lincoln and Ferry via Ashland was run off of their tour of duty east of Ashland towards Omaha near Melia and performed construction work train service.

**EMPLOYEES' STATEMENT OF FACTS:** Conductor Kinnie, Brakeman Fillmore and Brissey, Engineer Porter and Fireman Goucher, Omaha Division pool crew, stood first out on the pool and unassigned board at Lincoln, Nebraska, October 26, 1937.

Conductor Pickrell and crew, Engineer Wennersten and Fireman, Omaha Division crew, were regularly assigned to local freight train service, Lincoln, Nebraska, to Ferry, Nebraska, via Ashland, Nebraska. On October 26, 1937 this crew was used to perform 8 hours or less construction work consisting of unloading several cars of slag between Ashland and Melia near M.P. 42, governed by work train orders from 9:30 A.M. to 11:45 A.M. This work was performed after crew had run from Hobson (Lincoln freight yard) to Ashland, a junction point, on their regular trip, and outside of their assigned territory and off of the course of their trip.

**POSITION OF EMPLOYEES:** These claims have been handled with the highest operating official of the Carrier designated to handle such claims and in line with the provisions of the Railway Labor Act.

We herewith quote rules from the Conductors'-Trainmen's Schedules and Enginemen's Schedules on which these claims are based:

**Rule 29 (b) Conductors-Trainmen**

"In all road service, except passenger service, 100 miles or less, 8 hours or less (straight-away or turnaround, shall constitute a day's work: Miles in excess of 100 will be paid for at the mileage rates provided."

**Rule 63 (f) Conductors-Trainmen**

"If through the fault of the railroad or any of its employes a conductor-trainman is not called and thereby loses a trip through no fault of his, he will be paid for the time lost, but may be used extra in his class of service if permitted to resume his run or car without being absent from it more than two trips. It is understood that a freight conductor-trainman may be used in passenger service but a passenger conductor-trainman will not be used in freight service. This rule will not apply to pool conductors-trainmen run around, pay for which is provided in Rule 20. This rule shall not be deemed to relate to a failure properly to assign a conductor-trainman under the provisions of this schedule relating to seniority."

**Rule 18 Conductors-Trainmen**

"Conductors-trainmen in through and irregular freight service will be paid 7.00-5.59 cents per mile, 100 miles or less, 8 hours or less, to conductors-trainmen will be paid a minimum of 100 miles or less, 8 constitute a day; overtime at  $\frac{1}{4}$  of daily rate."

**"Rule 57 Conductors-Trainmen**

"In wrecking service or temporary work or water train service, ducators-trainmen will be paid a minimum of 100 miles or less, 8 hours or hours or less, at through freight rates; overtime at  $\frac{1}{4}$  of the daily rates."

**Rule 7 Engineers-Firemen**

"(a) Rates for engineers-firemen, in through and irregular freight, pusher, helper, mine run or roustabout, belt line or transfer work, wreck, construction, snowplow, circus trains, trains established for the exclusive purpose of handling milk, and all other unclassified service, shall be as shown in tabulation for through freight service.

(b) In all classes of service covered by paragraph (a), 100 miles or less, 8 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 class of engine or other power used.

(c) On runs of 100 miles or less overtime will begin at the expiration of 8 hours; on runs of over 100 miles, overtime will begin when the time on duty exceeds the miles run divided by  $12\frac{1}{2}$ . Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate, according to class of engine or other power used."

**Rule 13 Engineers-Firemen**

"Engineers-firemen not assigned to regular runs will run first in, first out."

The Board's attention is directed to the Committee's Statement of Facts to the effect Conductor Pickrell, train and engine crew, were a regular assigned local freight crew operating between Lincoln, Nebraska and Ferry, Nebraska via Ashland and they were used on the specific date to perform 8 hours or less construction work train service as defined in Engineers'-Firemen's Rule 7 and Conductors' Trainmen's Rule 57, off of their regular assigned tour of duty east of Ashland on the main line towards Omaha to perform construction work train service. Conductor Kinnie, train and engine crew, were in pool and

unassigned service and stood first out on the pool board at Lincoln and were not called for the pool and unassigned construction work train service that was performed by the regular assigned crew.

The Carrier is relying on Rules 42 and 43 (e) of the Conductors' and Trainmen's Schedules, on settlement made in claim of Engineer Kiesling and on settlement made by former General Chairmen Leverington and Larson where an engine crew was used on the Colorado & Southern out of Wendover, Wyoming, as their basis of denying these claims.

The Board's attention is directed that Rule 42 of the Conductors'-Trainmen's Schedules provides that when a crew is ordered to do construction work in the course of a trip the actual miles made will be added to the actual mileage of the trip. In the cases before your Board the crew was not used to perform construction work in the course of a trip. As you will note in the Committee's Statement of Facts this crew was used to perform construction work train service off and outside of the course of their trip.

Rule 43 (e) of the Conductors'-Trainmen's Schedules providing when assigned conductors-trainmen are required to go off of their regular runs between their terminals, to make a side trip, the actual miles made will be added to the actual mileage of the regular run. The Board will note from the Statement of Facts this assigned crew did not go off of their regular run between their terminals to make a side trip but were used off of the regular course of their trip to perform 8 hours or less construction work train service. Therefore, Rule 43 (e) is not applicable.

The Carrier has referred to the claim of Engineer Kiesling as well as another claim of engine crew that was used on Colorado & Southern out of Wendover as being similar to the instant claims and rely upon statements made by the Committees in those claims to the effect that if side trips were made on a crew's own seniority district, such miles would be added to the mileage of the trip.

The Committees would point out that the instant claims are not comparable to the above referred to claim for the reason that the assigned crew in the instant case was used to perform 8 hours or less work train service which belonged to pool or unassigned crews, whereas the other claims did not involve work train service.

**SUMMARY:** (1) Rule 29 (b), Conductors'-Trainmen's Schedules provides in all road service except passenger service, 100 miles or less, 8 hours or less, straightaway or turnaround, constitutes a day's work.

(2) Rule 63 (f), Conductors'-Trainmen's Schedules provides that when a crew is not called and loses a trip they will be paid for the trip lost. Therefore, Conductor Kinnie and crew, the pool crew standing first out at Lincoln on the Board should have been called to perform this construction service. That portion of Rule 63 (f) providing that the rule will not apply to pool crews under Rule 20 is not applicable as Rule 20 provides a runaround between two pool crews and this was not a runaround.

(3) Rule 18, Conductors'-Trainmen's Schedules provides the rate of pay applicable to the service performed.

(4) Rule 57, Conductors'-Trainmen's Schedules provides in wrecking service or temporary work or water train service, Conductors-Trainmen will be paid a minimum of 100 miles or less, 8 hours or less at through freight rates, overtime at three-sixteenths of the daily rate.

(5) Rule 7, Engineers'-Firemen's Schedules provides for a basic day and rates of pay for construction work train service.

(6) Rule 13, Engineers'-Firemen's Schedules provides Engineers and Firemen not assigned to regular runs will run first in first out.

Under the above quoted rules these claims are valid and should be allowed.

**CARRIER'S STATEMENT OF FACTS:** A main line of the Omaha Division extends 55 miles eastward from Lincoln, Nebraska, to Omaha, Nebraska. Ashland, Nebraska is on this line, 25.91 miles east of Hobson (the freight yards of Lincoln) and Melia, Nebraska, is 5.89 miles east of Ashland. A branch line extends 104.50 miles northward from Ashland to Ferry, Nebraska, which is on the west bank of the Missouri River across from Sioux City, Iowa.

On October 26, 1937, Conductor F. M. Pickrell and Engineer A. Wennersten and members of their crews were called and reported for duty for through freight train No. 84 (Extra 2159 East) at Hobson at 6:30 A.M., departed at 7:35 A.M. and proceeded 25.91 miles to Ashland, arriving there at 8:25 A.M., thence unloaded slag between Ashland and Melia and returned to Ashland, running 11.78 miles; departed from Ashland at 11:25 A.M. and proceeded 104.50 miles to Ferry, arriving there at 3:25 P.M., whereupon the engineer and fireman were relieved from duty at 3:35 P.M. and the conductor and brakemen were relieved from duty at 3:40 P.M. Therefore, this crew ran 142.19 miles and was on duty 9 hours and 5 minutes in the case of the engine crew and 9 hours and 10 minutes in the case of the train crew. Compensation for the 142 miles run amounted to \$11.58 for the engineer, \$9.06 for the fireman, \$9.94 for the conductor and \$7.94 for each of the brakemen.

The claims submitted by the brotherhoods in this case were not presented to the Company in the usual manner by the alleged claimants. Conductor Kinnie and Engineer Porter have not filed time slips for themselves and their crews for compensation sought in this case, and the time slips which were filed by Conductor Pickrell and Engineer Wennersten for the services performed by themselves and their crews on Oct. 26, 1937, did not bear any claim for compensation such as is now sought in their behalf.

**POSITION OF CARRIER:** The claim before the Board is for one (1) the members of a pool crew which performed no service, and (2) the members of crew of train No. 84 (Extra 2159) which crew made a side movement in the performance of construction work while en route on trip. Time slips pertaining to the first phase of the claim were not presented by the claimants in the usual manner, but the claim was initiated by the local chairmen who submitted time slips naming the alleged claimants. A copy of these time slips is attached hereto and marked Exhibit No. 1. Subsequently, the second part of the claim was added by the Committee approximately two years after the date for which compensation is claimed. Evidence of this is to be seen in copy of Committee's letter dated September 22, 1939, attached hereto and marked Exhibit No. 2. The members of the crew did not claim the compensation which is now being sought, as will be observed by copy of time slips certified by Engineer Wennersten and Conductor Pickrell, attached hereto and marked Exhibit No. 3.

The schedule rules pertaining to time slips are as follows:

**Engineers—Rule 51**

"If a trip report is incorrect, the engineer making it out will be notified in writing, and given explanation and reason for correction.

"In case of shortage of one day or more in an engineer's time, a voucher will be issued for same if requested."

**Firemen—Rule 51**

"If a trip report is incorrect or time is not allowed as claimed, the fireman or hostler will be notified in writing and given explanation and reason for correction.

"In case of shortage of one day or more in a fireman's or hostler's time a voucher will be issued for same, if requested."

**Conductors' & Trainmen's Rule 61**

"(a) If a trip report is incorrect, conductor (trainman) will be notified in writing by the superintendent and given an explanation of

reason for correction. The trip will be paid in accordance with the superintendent's understanding; but if on investigation, such understanding is found to be erroneous, correction will be made later. Pending investigation, the superintendent will retain the trip report.

"Full opportunity will be given for explanation, and correction will be made, with equal care whether in favor of or against an employe, even should the employe not have observed the error.

"(b) When deduction or additional allowance is made for some specific cause, that is not covered by the current time slips, notice will be sent to the conductors (trainmen at the time entry is made on the time roll. Shortage of one day or more will be paid by time check."

Time slips are supplied by the Company for the employes to use in reporting their time and claiming compensation to which they are entitled. Six items of instructions pertaining to the use of time slips are printed on the back of the form—Item One of which provides that:

**"Instructions"**

"1. This report shall be rendered for all engine and train crews including yard and switching crews. Enginemen, firemen, conductors, flagmen, train baggagemen and trainmen shall also use this form when reporting individually. The report shall be rendered and signed by the engineer for the engine crew and by the conductor for the train crew. If there is no engineer or conductor, it shall be rendered and signed by the ranking employe whose time is reported thereon. Reports shall be numbered consecutively for each month beginning with No. 1."

The time slips are the nucleus of the payroll system in effect and are necessary in all cases of compensation allowed on the payrolls. The instructions are clear as to who shall render and sign time slips and the requirement is manifestly fair and reasonable. The provisions of Rules 51 and 61, quoted, can be complied with by the Company only if the instructions in respect to rendering time slips are complied with by the employes.

Section 3 (1) of the Railway Labor Act vests jurisdiction in the Board over disputes which have been handled in the usual manner up to and including the chief operating officer of the carrier designated to handle same. It is the position of the Management that the alleged claimants have not presented any claim in the usual manner and inasmuch as the subject before the Board has not been initiated and handled in the usual manner it is not a proper case for the Board to act upon. Some two and one-half years have elapsed since the date of service which this case concerns. Efforts of the brotherhoods to make claims and short-cuts and break down the usual manner of procedure tend to confuse and delay disposition of subjects which should follow the normal procedure contemplated by the schedule rules and the Railway Labor Act.

In respect to enginemen, the United States Railroad Labor Board, under date of November 29, 1924, rendered Decision No. 2688 in Docket No. 4055, concerning dispute between the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen & Enginemen and certain Western Railways, including this Company, with respect to rates of pay, and a dispute with certain of the carriers upon one or more rules. Reference to this decision will disclose that its application was optional and that certain increased rates of pay were established by Article I, subject to the provisions of Article IV; that Article IV expressed the contingencies upon which adoption of the increased rates of pay depended. One of these contingencies was as follows:

(Section 2 (b), Article II)

"When engineers, firemen or helpers are required to make an emergency, side, or lap-back trip between their terminals, miles made

will be added to the mileage of the regular trip and paid for on continuous basis."

Certain carrier parties to the dispute in Docket No. 4055 had restrictive rules pertaining to emergency, side or lap-back service, but this Company had no such restrictions in its agreements, and consequently, in letter to the General Chairmen dated December 5, 1924 (copy attached hereto and marked Exhibit No. 4), being notice of the Company's option pursuant to Decision No. 2688, the General Managers expressed the Company's understanding about said Section 2 (b), as follows:

"We understand that our schedules already provide for such intermediate service on a continuous basis and that existing rules need not be further revised to express the purpose of Section 2 (b)."

Support for this understanding was extant in settlements reached and confirmed in letter dated July 23, 1915 (copy of which is attached hereto and marked Exhibit No. 5), bearing signed acceptance of the representatives of the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen & Enginemen. Case No. 9 of said settlements covered a side trip made by an assigned crew. It is given as follows:

"9. Engineer E. O. Sawtelle and firemen, St. Joseph Division, November 7, 1914:

"Details of Service: Assigned to passenger trains Nos. 50-55-56-49, between Clarinda and Bigelow. While at Bigelow, turnaround point, between arrival at 4:45 P.M. and departure at 6:05 P.M., they were required to go to Napier, 4.5 miles distance, with engine, to get three cars of stock. Left Bigelow at 5:00 P.M. and returned 5:45 P.M.

"Agreement: Ruling No. 1 (Rule 68-(a)) to apply. To be paid as follows: Actual time or miles in each service at through freight rates."

Lap-back service enroute is seen in Case 47 of Exhibit No. 5.

Support for this understanding was also to be found in the provisions of the schedules which specified that:

(1) Terminals are the points where runs begin and end, and turning points on turnaround runs shall be considered as intermediate points on continuous runs. (Rule 30):

(2) Time of employees will commence at the time required to report for duty and will continue until the time relieved from duty at terminal of run. (Rules 2 and 32):

(3) Arbitrary payments and special allowances (other than certain initial terminal and final terminal allowances) which conflict with payment of single time in miles or hours from time of reporting for duty until relieved from duty at the end of run shall be eliminated. (Rule 31):

(4) Any two or more classes of road service performed in a day or trip shall be combined and paid for at the highest rate applicable. (Rule 68-a):

(5) A new day or trip will be paid for only in event an engine-man is called upon for an additional trip after having arrived at his terminal upon having (a) completed his assigned service; or (b) made 100 miles, or (c) been on duty eight hours (with certain noted exceptions not pertinent here). (Rule 68-No. 2):

(6) Overtime shall be payable for all time on duty in excess of the minimum day, or in excess of the time produced by dividing the miles run by the noted speed basis in event the miles run exceed the minimum day. (Rules 2 and 7): and

(7) No exception to the foregoing principles of continuous pay of single time in miles or hours from the time required to report for duty until relieved from duty at end of day or trip was provided for in the agreement.

The subsequent agreement, consummated on January 20, 1925, effective September 1st, 1924 (the date specified in Decision No. 2688), permitted the understanding expressed in the Management's letter of December 5, 1924 to stand and the principles of continuous pay of single time in miles or hours from the time required to report for duty until the time relieved from duty at end of day or trip are to be found extant in the current schedule agreements. Support for this is found in the statement of the General Chairmen in letter dated July 1, 1926 (copy attached hereto and marked Exhibit No. 6) involving side trip onto the Colorado & Southern Railway line, to the effect: "However, we agree that if a similar trip had been made on our own railroad on their own seniority district actual miles only would be claimed." Claim in that case was withdrawn by the Committee in conference on December 22, 1926. Support is also found in settlement with Grand Lodge Officers of the Brotherhoods in letters of March 28, 1930 and April 4, 1930, attached hereto and marked Exhibits 7 and 7-A. Hence, the claim for compensation for 100 miles in addition to compensation for 130 miles, which is the distance from Hobson to Ferry, is seen to be in direct conflict with the specific provisions of the schedule agreement.

The contention of the Committee in its position that the side service which this case concerns constitutes unassigned service which belonged to another pool crew at Lincoln is far-fetched and untenable. Rule 54 provides that the senior firemen will have the choice of runs when character, merit and ability are equal in the judgment of the Master Mechanic. It places no limit whatsoever upon the establishment, revision of and abolishment of assignments. However, Rule 55 gives recognition to an unlimited right of the Management to establish, change and discontinue assignments. This rule provides for advertising regular positions for bids in pursuance of the provisions of Rule 54, and further provides for declaring such positions vacant when runs are changed to a certain extent. It permits the Management to make changes, no matter how insignificant, nor how extensive—the only requirement being that the run be declared vacant and bulletined in event the change produces the results noted in the rule as cause for opening it for bids. Rule 55 reads:

"(a) All permanent vacancies in road service for firemen shall be bulletined for seven days (except where the permanent bid plan is adopted) and will be given to the oldest competent fireman signing for it.

"When mileage on a run is increased or decreased 350 miles or more per month, or its equivalent, or the run is changed from day or night, or the leaving or arriving time is changed three hours or more, or if the layover is changed it shall be declared vacant and bulletined.

"INTERPRETATION: 'Or its equivalent' is to apply only to suburban service and short turnaround passenger runs.

"(b) Firemen will not be permitted to bid for run he has just vacated which is under bulletin until again bulletined unless displaced during life of bulletin."

There is no other provision pertinent to this question in the schedule agreement and in consequence no fixed condition limiting service by agreement. The mere fact that seniority and individual qualifications of firemen are respected in permitting them to choose runs which have a certain degree of regularity and other desirable conditions as to compensation, etc., does not preclude the performance of any particular service any more than if the run were not assigned. If this were not so, and if the side service could be considered as a separate trip in unassigned service as claimed, then it

would be just as sensible to hold that the assigned man was making a trip in unassigned service whenever his run was three hours or more late, which would of course be ridiculous.

Rule 7 is contingent upon the provisions of Rule 30 as to terminals, Rule 32 as to beginning and ending of day, Rule 31 as to payment of single time in miles or hours, etc., so that the Committee's reliance upon this rule to support the claim is mildly ludicrous. The claimants remained together and worked exclusively as members of the crew and were not taken from an assignment and placed in unassigned service. They performed only the service expected of them as members of the crew with which assigned and were compensated for the service correctly in conformity with the provisions of the rules previously discussed.

As to conductors and trainmen, the same fundamental principles of compensating crews exists as that which has been outlined for enginemen, namely:

1. Terminals are the points where runs begin and end, and turning points on turnaround runs are intermediate points on continuous runs. (Rule 37):

2. Time of employes commences at the time required to report for duty and continues until the time relieved from duty at terminal of run. (Rules 2 and 29):

3. Arbitrary payments and special allowances (other than certain initial terminal and final terminal allowances) which conflict with payment of single time in miles or hours from time of reporting for duty until relieved from day at end of run were eliminated. (Rule 30):

4. Any two or more classes of road service performed in a day or trip are combined and paid for at the highest rate applicable. (Rule 90-No. 1):

5. A new day or trip is payable only in event an additional trip is made after a crew has arrived at its terminal upon having (a) completed its assigned service; or (b) made 100 miles, or (c) been on duty eight hours, with certain noted exceptions not here pertinent. (Rule 36): and,

6. Overtime is payable for all time on duty in excess of the minimum day, or in excess of the time produced by dividing the miles run by the noted speed basis in event the miles run exceed the minimum day. (Rules 6 and 29).

These principles of compensating employes in road train service are further supported by certain rules in the Conductors' and Trainmen's schedule agreements which precisely cover the conditions of service which this case concerns, notably, Rule 42 pertaining to construction work enroute and Rule 43(e) pertaining to side trips, as follows:

#### Rule 42—Construction Work Enroute

"When a crew is ordered to do construction work in the course of a trip, the actual miles made will be added to actual mileage of trip."

#### Rule 43—Side Trips

"(e) When assigned conductors (trainmen) are required to go off their regular runs between their terminals to make a side trip, the actual miles made will be added to actual mileage of the regular run."

Is it not significant that the employes themselves, refrained from claiming the compensation asked for them by the brotherhoods, in the light of the fact that the schedule rules provide for payment of only the actual miles made? Is it not plain that the provisions of the agreement are understood by the employes



named as claimants in this case? What, then, can be the object of the brotherhoods in attempting to circumvent not only the usual well established method of procedure but also the elementary compensation provisions of the schedules. Is it their thought that the Board may, in contravention of the processes of bargaining, award new rules and modify the current rules to re-establishes arbitraries and special allowances vastly in excess of those which were bargained away in exchange for punitive allowances for overtime work some twenty years ago? Or, is it their thought that the Board may find and clearly allocate to pool crews some hitherto obscure preferential right to the performance of construction work? If the latter is their aim, it is essential to consider the status of pool crews because there are no such preferential rights agreed upon for them.

There are three principal groups of employes, viz., (1) assigned crews, (2) pool crews, and (3) extra lists. The first group consists generally of the senior employes who are regular members of particular crews holding assigned runs or jobs. The second group consists generally of employes junior in rank to the first group, who also are regular members of particular crews but, unlike the first group, they do not have any measure of regularity of service as they work in turn, first in-first out, in unassigned service which will be discussed later. The third group consists generally of employes junior in rank to those of the two preceding groups. They are not regular members of crews as are those of the first two groups but instead work first in-first out, from independent extra lists, filling temporary vacancies in the first two groups and being called upon for occasional extra service which does not require a full crew.

In considering the question of rights of pool crews and the limited range of such rights it is necessary to bear in mind that railroad transportation service is subject to uncontrollable fluctuations. Certain trains are scheduled and operated regularly, but they consist of such trains and the work required of them is not fixed or limited in any way, and it is because of this condition that the so-called "conversion" rules and "combinations of two or more classes of services" rules exist. In addition, extra trains or trains which are not scheduled are run to handle overflow business, business which is to be moved at other than the times of scheduled trains, and to perform work, which, for operating reasons, is not performed by scheduled trains.

The assignment of crews to operate particular trains or runs is neither required nor precluded by any provision or agreement, but is wholly within the discretion of the Management. The exigencies of the service are impelling factors but the expressed wishes of the employes concerned are also considered as a factor by the Management in exercising its discretion. The result is that some scheduled trains are handled by assigned crews and some are handled by pool crews. The details of duties and scope of work are not provided for and are not defined in any way that can be construed as precluding the handling of any particular cars, or forbidding the performance of construction work enroute or the making of side trips, etc. As a matter of fact, the only fixed conditions are the terminals or points between which the crew will run. While there is a scheduled time for departing or a set time for beginning work, trains oftentimes are run either ahead of schedule or late. The trains may vary in size and the amount and character of work may differ considerably from time to time. The train may even be annulled occasionally. Thus, while the assigned crew may be said to have a right to work on its run when the train operates, it cannot be shown that there is any rule or agreement which in any way fixes or limits the amount or character of work which an assigned crew may be called upon to perform with its train.

The service of pool crews is highly irregular because it is their lot to perform the work required over and above that which is cared for by the assigned crews, and the fluctuations in business, consequently are felt more seriously by the pools. The number of crews in a pool is regulated by schedule rule according to the average mileage run per crew, in order to maintain some fixed average earnings per crew, and variations in the number of trains run cause increases and decreases in the number of pool crews. In peak periods of business there may be a considerable number of crews in a particular pool and yet that pool may entirely cease to exist when business is at a low ebb and

essentially all service is cared for by the assigned crews. Therefore, to say that pool crews have a preferential right to certain work, such as the small amount of construction work performed enroute in this case is to palpably misrepresent the facts. Notable illustrations of the subordinate rights of pool crews are to be found on the Centerville Division where a pool of crews never exists and at Bridgeport, Nebr. and Greybull, Wyo. where the pools disappear completely at times. Briefly, the rights of pool crews are limited virtually to being called first in-first out, when available in relation to one another.

Summing up, it is the position of management that:

1. The alleged claimants have not asserted any claim in the usual manner.
2. The case has not been handled in the usual manner as provided for in Section 3 (i) of the Railway Labor Act.
3. Compensation for service on trips which include side movements and construction work enroute is provided for in the schedule agreements on the basis of single time in miles or hours and the claim for different basis of compensation is in conflict therewith.
4. There is no authentic ground for assertion that a side movement, or construction work in the course of a trip is unassigned service which belongs to pool crews and there are no provisions in the schedules which can be construed as providing either precisely or inferentially for the allowance claimed.

All of the foregoing and all data submitted in support of carrier's position has been presented to the duly authorized representatives of the employes concerned and made a part of the particular questions in dispute.

Oral hearing is waived because cases involving the same principle have been heard by your Board and are now awaiting decision.

(Exhibits not reproduced.)

**FINDINGS:** The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived hearing thereon.

This award deals only with the claims of Engineer Porter and Fireman Goucher.

From the facts of record it is found that the claim was made by the local chairman, in behalf of the employes, some considerable time after the work in question had been done. For that reason the Carrier urges that the claim is improperly before the Division and should be dismissed.

Specifically it is alleged the claim was not handled in "the usual manner", in accordance with Section 3 (i) of the Railway Labor Act. The Labor members have cited awards in which this issue has been disposed of by the Division. So have the Carrier members. There are conflicting decisions on the subject.

This claim was handled up to the chief operating officer of the Carrier, and was handled on its merits. Thus, it appears the initiation of the claim, rather than the handling of the claim following its initiation is questioned here, by the Carrier, and by the Carrier members.

The Organization which represents the individual employes has an interest, and therefore has a right, in having its contracts enforced. Its elected chairmen are supposed to be familiar with the terms of the agreements, and are expected to have a more complete knowledge of the operations under the agreement than the rank and file members. The findings of Referee Swacker in Award No. 3321 are applicable. The employes here did not protest individually when the work in question was performed, but their duly authorized representatives had the right to raise a question later, when they learned of the facts and circumstances. There is no time limit for the presentation of claims growing out of alleged contract violations in the Act.

The work in question was not emergency work, and was done by an assigned crew outside the regular assignment. Awards Nos. 5671 and 5686 involving the same Carrier and the same Organizations are applicable.

There remains the question of whether or not the claimants who were deprived of work by reason of the assigned local freight crew doing the work in question were "available." If Engineer Porter and Fireman Goucher were available on the date in question (October 26, 1937) the claim is valid.

If Claimants were available or could have been made available, claim is sustained; if not, claim is denied.

**AWARD**

Claim disposed of per Findings.

**BY ORDER OF FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD**

**ATTEST: (Sgd.) T. S. McFarland  
Executive Secretary.**

Dated at Chicago, Illinois, this 4th day of May, 1948.