Award No. 14707
Docket No. 24061

FIRST DIVISION

NATIONAL RAILROAD ADJUSTMENT BOARD

39 South La Salle St., Chicago 3, Illinois.

The First Division consisted of Engineers'-Firemen's Supplemental Board members and in addition Referee Ernest M. Tipton when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Engineer F. C. Farley, Stockton District, Western Division, for ten minutes overtime, 3:00 P. M. to 3:10 P. M., May 13, 1947.

JOINT STATEMENT OF FACTS: On May 9, 1947, Terminal Trainmaster's Special Notice No. 15, as follows, was posted at Tracy:

"ENGINEMEN:

Effective May 12th, engine crews on yard engines working in Tracy yard will not be required to register on Form S-2408, Engineers' Register of Arrival and Departure.

Engine crews will report on duty and go off duty at the engine to which assigned or for which called.

All yard engines are equipped with holders for Forms 2323 and 2370-A.

J. F. Schetter"

On May 13, 1947, Engineer F. C. Farley was assigned to yard job No. 904 at Tracy, bulletined for seniority choice of engineers as follows:

"Yard service Tramp daily except Monday. Report on and off duty lead near foot path in local yard, 7:00 A. M. to 3:00 P. M."

Engineer Farley reported for duty on his assignment at Tracy at 7:00 A. M., May 13, 1947, performed service thereon, and was relieved at the designated relieving track at 3:00 P. M. He was allowed one yard day at yard rate of pay applicable to engine used.

Claim is made for ten minutes overtime, 3:00 P. M. to 3:10 P. M.

POSITION OF EMPLOYES: It is the contention of this Committee that the Terminal Trainmaster's Special Notice No. 15, which is quoted in joint statement of facts, was an attempt to breach the Agreement existing between this Organization and the Carrier, by setting aside the provisions of Article 5 Engineers' Agreement which reads:

"In all classes of service, an engineer's time will commence at the time he is required to report for duty, and shall continue until the time the engine is placed on the designated track or he is relieved at terminal. Engineers are relieved when registering in."

without complying with Article 36 of Engineers' Agreement, reading as follows:

"This supersedes previous agreements. This Agreement and accepted rulings now in effect between officials of the Company and representatives of the Brotherhood of Locomotive Engineers shall continue in effect, subject to any subsequent Municipal, State or Federal legislation, and until either party desiring to change any of the foregoing rules or regulations shall have given to the other party thirty days' notice in writing of the change or changes desired."

However, if such notice was proper in your opinion, wish to direct your attention to Article 32, Section 6 (k), Engineers' Agreement reading:

"Upon arrival of each trip, engineers shall register their total mileage, or equivalent thereof, for current calendar month, on the roundhouse register, showing separately freight and passenger mileage, giving total mileage each class of service to date."

Which was not mentioned in said notice posted by Terminal Trainmaster which is just as binding on the Carrier as any other agreement provision, as well as on the Engineer, who in our opinion can not be relieved of complying with all rules incorporated within an agreement or contract with the Carrier by the simple posting of a notice by one of the Carriers' officers.

This Committee asks that due consideration be given to our position in this case, and respectfully request that your Honorable Board render a favorable decision to the claimant engineer.

POSITION OF CARRIER: The claim in this docket, for payment of ten (10) minutes overtime, is based upon the contention of petitioner's representatives that it is not permissible for the carrier to relieve yard engineers of the requirement for registering in on the roundhouse register at Tracy upon completion of their day's work, and that the action of the carrier, in dispensing with such requirement through the medium of Special Notice No. 15, dated May 9, 1947, was improper.

The absurdity of such contention is apparent when consideration is given to the provisions of Section 1 (b) and (1), Article 11, of the current agreement covering engineers, which are as follows:

"ARTICLE 11

SWITCHING SERVICE

Section 1. (b). Eight hours or less shall constitute a day's work, overtime to be paid on minute basis at one and one-half times the hourly rate, according to class of engine. Time to begin when required to report for duty and to end at time engine is placed on designated track or engineer is released. **Where engineers are required to register on and off duty,** the time required to perform such service shall be construed to mean time on duty.

(1). **A designated point will be established for engineers coming on and going off duty,** and before such points are changed forty-eight hours' advance notice will be given. Extra engineers will be notified when called the point at which required to report for duty." (Emphasis supplied.)

It should be observed that the foregoing agreement provisions apply specifically to engineers assigned to or filling positions **in switching (yard) service.** They provide, among other things, that (1) a designated point

shall be established by the carrier to govern yard engineers coming on or going off duty; (2) that certain advance notice (48 hours) shall be given by the carrier to such engineers before the established designated point is changed; (3) that in determining the measure of compensation accruing, the time of engineers shall be computed from the time they are required to report for duty and shall end when they have placed the engine on the designated track, or they are otherwise released; and (4), **that where, or if, yard engineers are required by the carrier to register on or off duty,** the time so expended shall be considered to be time on duty for compensation purposes.

Those agreement provisions by their plain and unambiguous terms recognize the carrier's reserved prerogative of designating the point, or location to govern yard engineers coming on or off duty, and likewise its prerogative of either requiring, **or not requiring** yard engineers to register on and off duty.

Insofar as the instant docket is concerned, on and prior to May 9, 1947, and continuing thereafter until May 11, 1947, inclusive, engineers assigned to or filling vacancies on yard job No. 904 at Tracy, were required by the carrier—in the exercise of its recognized prerogative—to register on and off duty at the roundhouse on form S-2408, the form prescribed by the carrier for such purpose. However, by virtue of the instructions contained in Special Notice No. 15 (referred to and quoted in the foregoing joint statement of facts) effective May 12, 1947, **such requirement was discontinued in its entirety,** and thereafter said engineers were required to report for duty and to go off duty at the engine to which assigned, or for which called, at the "lead near foot path in local yard," the established and designated point.

The claimant on May 13, 1947, the date here involved, reported for duty on his assignment, yard job No. 904, at the designated point on the lead near the foot path in the local yard, at 7:00 A. M., and after completing his day's work, was relieved by the carrier at such designated point at 3:00 P. M. For such service, the claimant was properly compensated by the payment of one yard day at yard rate of pay applicable to the engine used, computed continuously, in accordance with the provisions of Section 1 (b), Article 11, of the current agreement covering engineers, supra, computed from 7:00 A. M., the time required to report for duty, and ending at 3:00 P. M., the time he placed his engine at the designated relieving point.

The carrier submits that in consideration of the provisions of Sections 1 (b) and (1), Article 11, of the current agreement covering engineers, the position assumed by petitioner's representatives in this docket is untenable, and is clearly opposed to the terms of said agreement provisions; furthermore, since it was not necessary for the claimant to go to the roundhouse, and since he was not required by the carrier to register off duty, or in fact to perform any other service or work at the carrier's instance, during the period from 3:00 P. M. to 3:10 P. M., May 13, 1947, no valid basis exists under any provision of the current agreement for the additional payment demanded.

During the handling of the instant claim with representatives of the carrier, the petitioner's general chairman referred to Article 5 and Section 6 (k), Article 32, of the current agreement covering engineers, to support his contention and the additional compensation claimed. Those agreement provisions are as follows:

"ARTICLE 5

BEGINNING AND ENDING OF A DAY

In all classes of service, an engineer's time will commence at the time he is required to report for duty, and shall continue **until the time the engine is placed on the designated track** or he

is relieved at terminal. Engineers are relieved when registering in." (Emphasis supplied.)

"ARTICLE 32

REGISTERING MILES

Section 6. (k) Upon arrival of each trip, engineers shall register their total mileage, or equivalent thereof, for current calendar month, on the roundhouse register, **showing separately freight and passenger mileage, giving total mileage each class of service to date."** (Emphasis supplied.)

While the carrier asserts, in the light of the express provisions of Sections 1 (b) and (1), Article 11, which rules as previously stated **apply specifically to switching (yard) service,** that the general chairman's citation of Article 5 is irrelevant and that said agreement provision cannot be construed to apply in this docket, nevertheless, attention is invited to the fact that even though it be conceded Article 5 were applicable (the carrier does not so concede but expressly denies) there could still be no proper basis thereunder for either the contention upon which the claim is based or for the payment sought. Such conclusion is simply fortified by the plain language of Article 5 which it will be noted contains alternate provisions in respect to the method of terminating an engineer's time. Otherwise stated, Article 5 stipulates that the time of an engineer shall be computed from the time he reports for duty and shall continue until **either** the time his engine is placed on the designated track, **or** he is relieved at the terminal, and further, that in the event the engineer is required to register in, the time of registering in shall be the relieving time.

Article 5 does not, as the petitioner and its representatives here imply, contain a mandatory requirement upon the carrier to continue the working time, or the time on duty of a yard engineer until the time he registers in; to the contrary, that Article—like Section 1 (b), Article 11—conclusively recognizes that the carrier may **at its election** either continue such time until the time the engineer is released through placement of his engine on the track designated, or **if the carrier elects to require the engineer to register in,** to continue the time on duty until he has completed the latter service.

It has been established that the claimant in this docket was definitely relieved, by virtue of carrier's Special Notice No. 15, of any requirement for registering in after completion of his day's work; it must therefore be manifest that the allowance of one yard day (8 hours), computed from the time he reported for duty **until the time he placed his engine on the designated relieving track,** complied literally not only with the terms of Section 1 (b), Article 11, of the current agreement covering engineers, but likewise, with Article 5 of said agreement.

Section 6 (k), Article 32, of the current agreement covering engineers, also referred to by petitioner's general chairman, cannot by any means be construed to support the payment here claimed. Said agreement provision relates to the recording, or placing, of the total mileage, or its equivalent operated by engineers, and not, as in this case, to the matter of registering on and off duty which is embraced within Article 5, and Section 1 (b), Article 11, of the current agreement.

In the final analysis, what the petitioner is obviously seeking in this docket is a sustaining award from this Division that would be tantamount to revising the agreed-upon language now contained in the last sentence of Section 1 (b), Article 11 of the current agreement—the controlling rule applicable to engineers in switching (yard) service—which would in effect remove from said rule the carrier's prerogative of either requiring or not requiring such engineers to register in, and substituting therefor language

not previously agreed to by the parties providing that engineers in yard service **shall be required to register on and off duty.** That this Division has the authority to construe and enforce agreements but not to make new rules, or to revise, amend or abrogate existing rules of agreements is a well-established principle.

The carrier submits that on the basis of the evidence presented, there is no valid basis for the additional compensation claimed and therefore, said claim should be declined.

CARRIER'S REPLY TO POSITION OF COMMITTEE: Committee states:

> "It is the contention of this Committee that the Terminal Trainmaster's Special Notice No. 15, which is quoted in joint statement of facts, was an attempt to breach the Agreement existing between this Organization and the Carrier, by setting aside the provisions of Article 5 Engineers' Agreement which reads:
>
> > 'In all classes of service, an engineer's time will commence at the time he is required to report for duty, and shall continue until the time the engine is placed on the designated track or he is relieved at terminal. Engineers are relieved when registering in.'
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> without complying with Article 36 of Engineers' Agreement, reading as follows:
>
> > 'This supersedes previous agreements. This Agreement and accepted rulings now in effect between officials of the Company and representatives of the Brotherhood of Locomotive Engineers shall continue in effect, subject to any subsequent Municipal, State or Federal legislation, and until either party desiring to change any of the foregoing rules or regulations shall have given to the other party thirty days' notice in writing of the change or changes desired.' "

Committee's allegation that Terminal Trainmaster's Special Notice No. 15 was an attempt to breach the Agreement existing between the Organization and the carrier by setting aside the provisions of Article 5 of the current agreement covering engineers, is entirely without foundation. The carrier need not do more than refer the Division to that part of carrier's position reflected on pages 4 and 5 to conclusively prove that there was no attempt on the part of carrier's representative to breach the current agreement covering engineers, and to definitely establish that no breach of said agreement occurred.

Committee also states:

> "However, if such notice was proper in your opinion, wish to direct your attention to Article 32, Section 6 (k), Engineers' Agreement reading:
>
> > 'Upon arrival of each trip, engineers shall register their total mileage, or equivalent thereof, for current calendar month, on the roundhouse register, showing separately freight and passenger mileage, giving total mileage each class of service to date.'
>
> Which was not mentioned in said notice posted by Terminal Trainmaster which is just as binding on the Carrier as any other agreement provision, as well as on the Engineer, who in our opinion can not be relieved of complying with all rules incorporated within an agreement or contract with the Carrier by the simple posting of a notice by one of the Carrier's officers."

While as stated by the carrier on page 4 of its position, Section 6 (k), Article 32, of the current agreement covering engineers relates to the recording, or placing, of the total mileage, or its equivalent operated by engineers, and not to the matter of registering on and off duty which is embraced within Article 5, and Section 1 (b), Article 11, of said agreement, the carrier, in view of statement made by committee following their quotation of Article 32, Section 6 (k), deems it advisable to direct the Division's attention to that part of Article 32, Section 6 (k), as follows:

"Upon arrival each trip—"

and that part, as follows:

"—showing separately freight and passenger mileage, giving total mileage each class of service to date."

indicating that this is a road service, not a yard service rule. The Division's attention is also directed to Carrier's Exhibit A, which is a copy of a notice posted dated May 11, 1947, to all yard engineers in Tracy Yard, bearing signature of local chairman, BofLE. Carrier calls particular attention to paragraphs 1 and 5 of said notice, which for convenience are quoted:

"In regard to Terminal Trainmaster's Special Notice No. 15 posted to take effect May 12, 1947, I have received the following instructions from General Chairman P. O. Peterson.

* * * *

Regularly assigned yard engineers will NOT be required to register their miles as prescribed by Article 32, Section 6 (k) of the agreement covering Engineers, but all other engineers are required to register miles after being used in yard service, and time consumed must be considered as time on duty."

The claimant was a regularly assigned yard engineer at Tracy May 13, 1947.

All data herein submitted have been presented to the duly authorized representative of the Employes 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 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.

The claimant relies upon Article 5 of the Engineers' Agreement which reads:

"In all classes of service, an enigneer's time will commence at the time he is required to report for duty, and shall continue until the time the engine is placed on the designated track or he is relieved at terminals. **Engineers are relieved when registering in.**" (Emphasis supplied.)

The carrier contends that sections 1(b) and (1) of Article 11 of the agreement are controlling under the facts of this claim. These sections are as follows:

> 1(b) Eight hours or less shall constitute a day's work, overtime to be paid on minute basis at one and one-half times the hourly rate, according to class of engine. Time to begin when required to report for duty and to end at time engine is placed on designated track or engineer is released. Where engineers are required to register on and off duty, the time required to perform such service shall be construed to mean time on duty.
>
> (1) A designated point will be established for engineers coming on and going off duty, and before such points are changed forty-eight hours' advance notice will be given. * * *"

It is a cardinal rule of construction that a contract should be construed as a whole and give every section, paragraph and sentence some meaning, if possible. Using this yardstick in construing this agreement, it is apparent that there is a conflict between Article 5 and section 1 (b) of Article 11 of the agreement. Article 5 is preceded by Articles that deal only with road service. For instance, Article 1 deals with passenger service, Article 2 deals with freight service, Article 3 deals with excess mileage of both passenger and freight services, and Article 4 deals with combination service. Thus we see that Articles 1 to 4 inclusive, deal with road service, while Article 11 deals with switching service. We, therefore, think that Article 5 refers to road service only, and is not applicable under the facts of this record, but Article 11 applies here. Thus, an engineer in switching service is only required to register off duty when and where carrier requires such service. This construction is further strengthened by the rule of construction that ordinarily a specific rule will take precedence over a general rule. See Award No. 10518.

Special Notice No. 15, dated May 9, 1947 stated that all "yard engines are equipped with holders for Forms 2323 and 2370-A." So it was not necessary for this claimant to go to the roundhouse to register off duty, in fact his doing so was contrary to instructions and, of course, any overtime he claims in doing so was caused by his own voluntary act for which the carrier cannot be held liable. This Special notice No. 15 was proper under Section 1 of Article 11.

Nor is claimant entitled to overtime under Section 6(k) of Article 32 of the agreement. A mere reading of that section shows it applies to road service.

AWARD

Claim denied.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 10th day of August, 1951.