

**Award 15042**

**Docket 23890**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FIRST DIVISION**

**39 South La Salle Street, Chicago 3, Illinois**

**With Referee Robert O. Boyd**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**BROTHERHOOD OF LOCOMOTIVE FIREMEN  
AND ENGINEMEN**

**THE NEW YORK CENTRAL RAILROAD COMPANY  
(OHIO CENTRAL LINES)**

**STATEMENT OF CLAIM:** "Claim of Engineer R. C. Meadows and Fireman V. E. Nelson for 100 miles back-lap trip on October 18, 1946 account of being required to leave their freight train at Armitage, return to Albany and perform wrecker service after which they returned to Armitage for their train and proceeded to Corning."

**EMPLOYES' STATEMENT OF FACTS:** The territory in which this dispute arose is a part of the Southern Sub-Division, K & M Rwy District, of the Ohio Central Lines of the New York Central Railroad.

Claimants, Engineer and Fireman were in pool freight service operating between Hobson and Corning, a distance of 57 miles, with Hobson the home terminal.

On October 18, 1946 Engineer Meadows and Fireman Nelson went on duty at Hobson at 3:30 P. M. for a Hobson-Corning turn, train 2nd, 33, engine 2180; and departed from Hobson at 4:00 P. M. with 81 cars.

In accordance with instructions received upon arrival at Armitage, 36 miles north of Hobson, the crew set their train on Armitage siding, returned light to Albany, 11 miles south of Armitage, and assisted in rerailling the tender of helper engine 2264 which had been derailed at the stock track switch. They then returned light to Armitage, coupled to their train and continued their trip to Corning and returned to Hobson, where Fireman Nelson went off duty at 3:35 A. M. and Engineer Meadows went off duty at 3:45 A. M. October 19, 1946.

Claimants were paid 114 miles (Hobson-Corning-Hobson) plus overtime (3 hours 8 minutes for Engineer, 2 hours 58 minutes for Fireman) on continuous time basis from time on duty at Hobson 3:30 P. M. October 18, 1946 until off duty on return to Hobson at 3:45 A. M. October 19, 1946.

Claims from Engineer Meadows and Fireman Nelson for payment of an additional 100 miles account required to leave their train at Armitage return to Albany and perform wrecker service, were denied by the Carrier.

**CARRIER'S STATEMENT OF FACTS:** The territory in which this dispute arose is a part of the Southern Sub-division, K & M Rwy District of the Ohio Central Lines of the New York Central Railroad.

Claimant engineer and fireman were in pool freight service operating between Hobson and Corning, a distance of 57 miles, with Hobson the home terminal.

On October 18, 1946, Engineer Meadows and Fireman Nelson were on duty at 3:30 P. M. for a Hobson-Corning turn, Train 2nd 33, Engine 2180, and departed from Hobson at 4:00 P. M. with 81 cars.

In accordance with instructions received upon arrival at Armitage, 36 miles north of Hobson, the crew set their train on Armitage siding, returned light to Albany, 11 miles south of Armitage, and assisted in rerailing tender of Helper Engine 2264 which had derailed at the stock track switch. They then returned light to Armitage, coupled to their train and continued their turnaround trip. Fireman Nelson went off duty at Hobson at 3:35 A. M. and Engineer Meadows went off duty at Hobson at 3:45 A. M., October 9, 1946.

Claimants were paid on continuous time basis at through freight rates from time on duty at Hobson, 3:30 P. M., October 18, 1946, until off duty after return to Hobson the morning of October 19, 1946.

Claims from Engineer Meadows and Fireman Nelson for payment of additional 100 miles each were declined by the carrier.

**POSITION OF EMPLOYES:** Claimant Engineer and Fireman hold seniority between Hobson, Ohio and Corning, Ohio.

On October 18, 1946, engineer R. C. Meadows and Fireman V. E. Nelson were called at Hobson for train 2nd 33, engine 2180 for a Hobson-Corning turn. Upon their arrival at Armitage, 36 miles north of Hobson this crew was instructed to set their train on Armitage siding, return light to Albany, 11 miles south of Armitage and assist in rerailing the tender of helper engine 2264. After completing the service on this back-lap trip, they returned light to Armitage coupled on to the train they had set off and resumed the trip for which they were originally called.

Claimants claimed 100 miles for the back-lap trip between terminals in addition to the full mileage of the trip for which called. The claim for 100 miles back-lap trip was denied and they were allowed 114 miles. (3 hours 8 minutes for engineer, 2 hours 58 minutes for fireman.)

Article 7 of The K & M Engineers Agreement provides:

- (a) In all classes of service covered by Article 4, 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.
- (b) 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.
- (c) Road engineers 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 with a minimum of 100 miles for the combined service. The overtime basis for the rate paid will apply for the entire trip.

Article 11—Beginning and Ending of Day.

- (a) In all classes of service, other than passenger, engineers' time will commence at the time they are required to report for duty and shall continue until the time engine is placed on the designated track or they are relieved at terminal. All advance call time rules are superseded, and the management may designate the time for reporting for duty.

Article 9 of The Ohio Central Firemen's Agreement provides:

- (a) In all classes of service covered by Article 7, 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.
- (b) 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 the class of engine or other power used.
- (c) Road engineers, firemen and 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, with a minimum of 100 miles for the combined service. The overtime basis for the rate paid will apply for the entire trip. 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 shall be paid for the entire day or trip.

Article 11 Beginning and Ending of Day.

- (a) In all classes of service, other than passenger, engineers, 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. All advance call time rules are superseded, and the management may designate the time for reporting for duty.

This crew was called for a freight trip Hobson to Corning and return to Hobson. There are no rules in the Agreement which sustain the Carriers contention that they can take a crew out of freight service, make a back-lap trip to perform wrecking service and pay them on a continuous time basis.

It is the Employes' contention that this crew is entitled to 100 miles for the back-lap trip as it was no part of the trip for which called.

All evidence set forth in this dispute has been considered by the parties in conference.

Oral hearing is not desired by either party.

**POSITION OF CARRIER:** The position of carrier is based upon the following principal points:

1. The First Division of the National Railroad Adjustment Board is without jurisdiction as this claim is tantamount to a request for a new rule.

2. There was no violation of rules.
3. Official Interpretations of the rule refute the claim.
4. Awards of the National Railroad Adjustment Board support the carrier's position.

Each of the foregoing principal points will be discussed in the order shown.

**1. THE FIRST DIVISION OF THE NATIONAL RAILROAD  
ADJUSTMENT BOARD IS WITHOUT JURISDICTION AS THIS  
CLAIM IS TANTAMOUNT TO A REQUEST FOR A NEW RULE.**

In the instant claim, the employes contend that, when crews in pool freight service, after leaving the initial terminal, are required to set out their train at an intermediate point, double any portion of the road and/or assist in rerailling engine or car not in their own train, then return to that intermediate point, pick up their train and continue their trip, they are entitled to an additional day's pay.

There is no rule or combination of rules in the applicable agreements which requires payment for such service on other than a continuous time and mileage basis, and no rule of any agreement has ever been so interpreted or so applied heretofore. The employes do not cite any rule which factually or by inference supports the instant claim. The claim is, therefore, a request for a new rule and does not properly fall within the coverage of Section 3, First (i) of the Railway Labor Act as amended June 21, 1934.

When, as in this case, a new rule is sought, it must be accomplished in conformity with the rules of the agreement involved and the procedure in Section 6 of the Railway Labor Act as amended. This Board cannot proceed under Section 6 of the Railway Labor Act because it is neither a Mediator nor an Arbitrator of disputes thereunder.

The authority of this Board is defined and circumscribed by the Railway Labor Act as amended June 21, 1934. The Board does not have jurisdiction thereunder to make any change in, add to, or take away from the provisions of the agreements in evidence, but can only interpret and apply agreements; it cannot change them in compliance with the wishes of either party. In this case the employes are asking that the Board exceed its authority and trespass outside the jurisdictional boundaries of the Adjustment Board which are limited very definitely to the scope defined in Section 3, First (i) of the Railway Labor Act, as amended June 21, 1934.

The First Division has recognized this principle in numerous awards; First Division Award 7057 is typical. In that award, Referee Robert G. Simmons stated:

"The National Railroad Adjustment Board has jurisdiction of disputes 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.' (Section 3, First (i) Railway Labor Act.) The services of the Mediation Board may be invoked in 'a dispute concerning changes in rates of pay, rules, or working conditions' etc. and 'any other dispute not referable to the National Railroad Adjustment Board' and not adjusted in conference. (Section 5, First, Railway Labor Act.)

Here the parties admit that there are no rules covering the problems here presented. The carrier submits that a long established practice is being followed. Under these circumstances, as we see this situation, it is one that calls for negotiation and conference or, that failing, submission to the Mediation Board. This Board does not have jurisdiction to make new rules. It determines questions

dealing with where have the parties placed themselves by their agreements. It does not have jurisdiction to say what should be but rather what is the situation.

This division is without jurisdiction of the subject matter of this dispute."

Also, in the case of the E.J. & E. Rwy. Co. vs. Burley, No. 160, decided June 11, 1945, Justice Rutledge delivered the opinion of the Supreme Court of the United States and referred to the distinction between collective bargaining (Mediation Board) and the settlement of grievances (Adjustment Board), and in the footnote on the last page of the printed opinion goes on to say:

"If their purpose was merely to authorize settlement for the future, without retroactive effects, the submission to the Adjustment Board was misconceived, since it **has no power to render a decision requiring the carrier or the union to make a new agreement. Its only authority, under the Act, is to determine what they have agreed upon previously** or, outside the scope of a collective agreement, what rights the Carrier and its employes may have acquired by virtue of other incidents of the employment relation. Such an issue by its very nature looks to the past, though it may also seek compliance for the future." (Emphasis added.)

It is clear, therefore, that the instant claim does not fall within the purview of the amended Railway Labor Act, Section 3, First (i) and should be dismissed for lack of jurisdiction.

Subject to and without waiving objections to jurisdiction as aforementioned, the carrier will hereinafter submit its argument on the merits of the case.

## 2. THERE WAS NO VIOLATION OF RULES.

There is in evidence an agreement effective August 1, 1935 covering Engineers, K & M Rwy District; and an agreement effective June 21, 1924 covering Engineers, T & O C and Z & W Districts and Firemen and Hostlers, T & O C, Z & W and K & M Districts.

The claimant engineer and fireman were in pool freight service operation between Hobson, Ohio, the home terminal, and Corning, Ohio. On October 18, 1946, Engineer Meadows and Fireman Nelson went on duty at Hobson at 3:30 P. M. for a Hobson-Corning turn, Train 2nd 33, Engine 2180, and departed from Hobson at 4:00 P. M.

In accordance with instructions received by them at Armitage, 36 miles north of Hobson, the crew set their train on the siding at Armitage, moved light to Albany, 11 miles south of Armitage, assisted in rerailing tender of Helper Engine 2264, then returned light to Armitage, coupled to their train and continued their turn-around trip.

Claimants were paid on the continuous time and mileage basis from time on duty at Hobson at 3:30 P. M., October 18, 1946 until off duty on return to Hobson the next morning; the fireman went off duty at Hobson at 3:35 A. M. and the engineer went off duty at 3:45 A. M., October 19, 1946.

Payment on the continuous time and mileage basis for service performed by claimant engineer and fireman on October 18 and 19, 1946 was entirely proper in accordance with the applicable agreement rules which, so far as relevant, read as follows:

ENGINEERS: K M District; Effective August 1, 1935

### "Article 4. Rates of Pay.

- (a) Rates for engineers in through and irregular freight, pusher, helper, roustabout, belt line or transfer, work, wreck, construc-

tion, snow plow, circus trains, trains established for the exclusive purpose of handling milk, and all other unclassified service shall be as follows:

(rates not quoted)

- (b) For local or way-freight service, 52 cents per 100 miles or less for engineers shall be added to the through freight rates, according to class of engine; miles over 100 will be paid for pro rata.

Local freight rates apply to mine run service effective July 1, 1923."

**"Article 7. Basic Day and Overtime.**

- (a) In all classes of service covered by Article 4, 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.
- (b) 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 ½. 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.
- (c) Road engineers 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 with a minimum of 100 miles for the combined service. The overtime basis for the rate paid will apply for the entire trip.

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 shall be paid for the entire day or trip."

**"Article 10. Arbitraries and Special Allowances.**

- (a) Excepting payment under rules applying to work performed at initial and final terminals, and to final terminal delays, all arbitraries and special allowances applying to road service other than passenger, under rules, regulations, or practices, which conflict with the payment of single time, in miles or hours, from the time required to report for duty until released from duty at the end of the trip shall be eliminated."

**"Article 11. Beginning and Ending of Day.**

- (a) In all classes of service, other than passenger, engineers' time will commence at the time they are required to report for duty and shall continue until the time engine is placed on the designated track or they are relieved at terminal. All advance call time rules are superseded, and the management may designate the time for reporting for duty."

**"Article 21. Rules for Application of Supplement No. 24.**

In consideration of granting overtime on the basis provided in Article 7, all rules, regulations, or practices, and interpretations to Supplement No. 15 to General Order No. 27 applicable to freight service covered by Article 4 which conflict with the application of the rules contained in this order shall be changed to conform therewith."

**"Article 32.**

Actual mileage will be allowed for doubling and side trips, such mileage to be added to the actual mileage of the trip and overtime based on 12 ½ miles per hour."

**FIREMEN AND HOSTLERS:** T & O C, Z & W and K & M Districts; Effective June 21, 1924.

**"ARTICLE 7.**

**(a) Rates of Pay:**

Rates for engineers, firemen and helpers in through and irregular freight, pusher, helper, roustabout, belt line, or transfer, work, wreck, construction, snow plow, circus trains, trains established for the exclusive purpose of handling milk, and all other unclassified service shall be as follows:

(rates not quoted)

**"ARTICLE 9**

**Basic Day and Overtime**

- (a) In all classes of service covered by Article 7, 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.
- (b) 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 12½. Overtime shall be paid for on the minute basis, at an hourly rate of three-sixteenths of the daily rate according to the class of engine or other power used.
- (c) Road engineers, firemen and 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, with a minimum of 100 miles for the combined service. The overtime basis for the rate paid will apply for the entire trip. 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 shall be paid for the entire day or trip."

**"ARTICLE 11.**

**Beginning and Ending of Day.**

- (a) In all classes of service, other than passenger, engineers, 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. All advance call time rules are superseded, and the management may designate the time for reporting for duty."

**"ARTICLE 15.**

- (d) Actual miles will be allowed for all side trips and doubling of all hills, such mileage to be added to mileage made on the trip and paid for in accordance with Article 9(a)."

# "ARTICLE 69.

Subjects in this schedule that are based on the following awards:

Engineers' Award of May 1, 1912; Firemen's Award of May 3, 1913; Award of the Council of National Defense of March 19, 1917; and General Order No. 27 and supplements thereto, not specifically modified herein are subject to such interpretations as have been placed on them by the several Arbitrators or Referees and their decisions shall cover these rules as far as applicable."

The employees' claim in this case is that the applicable agreement rules require road crews in pool freight service, after leaving the initial terminal, to proceed in a direct route to the other terminal without diverging in any way therefrom; and that, if such road freight crews make a trip over any portion of the road from an intermediate point where they had set out their train and return thereto, such movement constitutes a "back-lap", begins a new day and requires payment of a minimum day of 100 miles in addition to and separate from payment for the regular trip.

Manifestly, the employees are in error in contending that so-called "back-lap" trips (or side trips) when made between terminals cannot be included with straightaway or turn-around trips and paid for on the continuous time and mileage basis, because it is an established and indisputable fact that crews are properly paid continuous time and mileage from time on duty at one terminal until released at another terminal or returned and released at the initial terminal, except when tied up between terminals under provisions of other specific agreement rules which are in no way pertinent to this claim.

There cannot be read into any rule of any of the agreements in evidence in this dispute a provision—necessary if the instant claim is sustained—that a change in direction of movement of a road freight crew between terminals or doubling a portion of the road between terminals for any reason, shall have the effect of beginning a new day and penalize the carrier to the extent of paying such crews an additional minimum day's pay for a few minutes work performed en route. Such interpretation and application of the rules would nullify not only the Beginning and Ending of Day rules which clearly provide that time shall commence at the time the crews report for duty and continue until relieved from duty at the end of the trip, but would likewise nullify the provision of the Basic Day and Overtime rules that "miles in excess of 100 will be paid for at the mileage rates provided", and also nullify the provisions of Article 7(b), Engineers and of Article 9(b), Firemen, that "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  $12\frac{1}{2}$  . . ."

When claimant engineer and fireman arrived with their train at Armitage, an intermediate point, on October 18, 1946, their service had not ended nor was their turn-around trip completed. They could not, under schedule provisions in effect on this property, then begin a new day or properly claim 100 miles for moving light from Armitage southward 11 miles to Albany, there assisting in rerailling engine 2264, then returning light to Armitage where they picked up their train and continued their Hobson-Corning-Hobson trip.

The employees, in submitting and progressing this claim for penalty payment of a minimum day, obviously do so on the false premise that, if a specific type of service is not required of pool freight crews en route every day, on the day some such service is required between terminals it falls outside the assignment of the pool freight crews who, because they happen to be available at the time, perform the service. They completely disregard the fact that all such service performed is within the confines of the seniority territory in which the pool freight crews operate.



The true fact is that crews in pool freight service, such as the claimant engine crew in the instant case, have no restricted working limits other than the territory between Hobson and Corning and can be run from an intermediate point in any direction so long as they are not used outside the recognized seniority territory, without being entitled to payment other than on the continuous time and mileage basis from time on duty at the initial terminal until off duty at the end of the trip.

Crews in unassigned pool freight service on this property are required to protect all freight service that is not protected by assigned crews, and to protect such unassigned service over the entire territory in which such pool freight crews operate by seniority right. Their service fluctuates from day to day; service requirements cannot be anticipated and must necessarily be protected promptly as they develop. Most assuredly, derailment of Engine 2264 at the stock track switch at Albany, which necessitated the alleged "back-lap" in the instant case could not have been anticipated. In recognition of such varying service requirements, pool freight crews are not confined to specific service but are used as needed in any and all directions on all portions of their recognized working territory. For any and all services performed between terminals, such road freight crews are properly paid on the continuous time and mileage basis. The rules require nothing more.

In their recent concerted effort to obtain changes in existing rules and working conditions, the Engineers and Firemen together with the O. of R. C., B. of R. T. and S. U. N. A., requested 45 new rules in their proposition submitted to the carriers under date of June 20, 1947. Items 21 and 24 of their June 20, 1947 Proposition are quoted below:

**"21. CREWS USED TO PERFORM MORE THAN ONE CLASS OF SERVICE**

Engineers and Firemen (Helpers) in road or yard service required to perform more than one class of service in a day or trip (such as through freight, passenger or yard crews used to perform work, wreck or construction service, or vice versa) shall be paid not less than a minimum day for the additional service at the rates applicable to same in addition to the miles or hours of road trip or day and without any deduction therefrom.

Conductors and Trainmen in all classes of road service required to perform more than one class of service in a day or trip (such as through freight and passenger crews used to perform work, wreck or construction service or vice versa) shall be paid not less than a minimum day for the additional service at the rates applicable to same in addition to the miles or hours of the road trip or day without any deduction therefrom."

**"24. LAP BACK OR SIDE TRIPS, DOUBLING HILLS**

Crews in any class of road service required to make a lap-back trip, side trip or double hills shall be paid not less than a minimum day at the rates applicable, for each such trip or double in addition to all other time earned on the day or trip and without any deduction therefrom."

On July 17, 1947, the proposed new rules were discussed on the property with the general chairmen representing the Engineers and Firemen, (also the Conductors and Trainmen) on the Ohio Central Division of the carrier. Items 21 and 24, as above-quoted, were two of the proposed rules discussed.

That the Ohio Central employes clearly recognized the schedule rules now in effect between the carrier and its employes do not provide for penalty payment of a minimum day in addition to all other time earned on the day or trip, for any work performed by road freight crews between terminals is well established by the fact that their representatives were parties to the request for the new rules, 21 and 24, quoted above. Such rule or rules, when and if

adopted, would provide a basis for the compensation which the employees contend should be paid the claimant engine crew in the instant case now before the Board. Until either or both of the two rules, 21 and 24 as proposed, are adopted and made effective, there is no sound basis for the claim.

Manifestly, if present schedule rules supported the instant claim, there would be no reason whatsoever for the employees to seek such new rules.

The foregoing and the fact that no similar claims have previously been filed by the employees on this property during the 28-year period the present relevant rules have been in effect refute the claim.

### 3. OFFICIAL INTERPRETATIONS OF THE RULES REFUTE THE CLAIM.

The additional compensation claimed in the instant case is specifically denied under the principles established in Supplements No. 24 and 25 to General Order No. 27 as hereinafter shown.

The engine and train service employees had requested time and one-half for overtime when they first made demands for the 8-hour day in 1916; such demands were denied at the time the Adamson Act was passed September 3, 1916. When subsequent demands were made by the employees, Supplements 15 and 16, dated April 10, 1919, established the time and one-half basis of payment for overtime for engineers, firemen and trainmen in yard service and for hostlers and hostler helpers, but such provisions did not extend to service paid on the mileage or road basis, leaving open for further negotiations the question of punitive overtime for road service employees.

The subject was given further study by the Director-General and in Memorandum, dated November 15, 1919, he rejected the employees' contentions that there was discrimination in the manner of paying for overtime in road service in favor of other classes of employees and held that there was discrimination between road freight service employees on trains which did not make 12½ miles per hour average and road freight service employees on faster trains. He then made the following proposal to the chief executives of the B. of L. E., B. of L. F. & E., O. of R. C. and B. of R. T.—

"It seems to me that the best way to accomplish the giving of reasonable additional compensation to the employees in this slower freight service so as to remove the unjust discrimination which in a broad and general way it seems to me exists between them and the employees in their faster freight service, is on the one hand to allow time and one-half for overtime, and on the other hand to cut out in all freight service all special arbitraries and allowances of every character, including initial terminal delays and final terminal delays. I believe these steps will substantially correct the inequalities which now exist and will put the compensation for freight train service upon a much fairer basis than now exists.

"I am therefore willing to establish December 1, 1919, the time and one-half for overtime in road freight service provided the train and engine men will accept such a basis in lieu of all special allowances and arbitraries of every character and will do this for the railroads as a whole.

I have no doubt that an incidental benefit arising from this course will be that it will tend to correct extreme cases of unnecessarily slow trains, although I do not believe it can or ought to result in raising all trains to the 12½ miles speed basis.

The proposition herewith made is shown in detail by the amendments on the attached copies of Supplements Nos. 15 and 16. It is the purpose of the Railroad Administration, by these amendments and by any necessary instructions, to prohibit abuses which might otherwise arise by reason of the elimination of the various arbitraries, special allowances, etc.

Time and one-half for overtime is not to be so applied as to increase the payments which will be made as a result of any held-away-from-home terminal rule." (Emphasis added.)

In letters dated November 24 and 25, 1919, the Director-General answered questions regarding his proffered revision of Supplements Nos. 15 and 16, clearly indicating the intent to eliminate arbitraries of every kind and to establish compensation on the basis of single time from the time engine and train service employees went on duty until finally released from duty.

On December 2, 1919, the Chief Executives of the four engine and train service brotherhoods informed the Director-General that his program was acceptable, provided certain arbitraries paid at initial and final terminals were retained.

Between December 2 and 13, 1919, there were conferences at Washington, D. C. between the Directors of the Divisions of Operation and Labor of the United States Railroad Administration and the Chief Executives of the B. of L. E., B. of L. F. & E., O. of R. C. and the B. of R. T., accompanied by a special committee composed of General Chairmen of the respective organizations. These conferences were for the purpose of determining just what changes or additions would be necessary in the provisions of Supplements 15 and 16 to have them conform to the time and one-half basis of payment for road service other than passenger. Many questions were asked by the employees and answers thereto given by the Director-General. Such questions and answers are contained in Memorandum, United States Railroad Administration, December 17, 1919, which is not reproduced here, but by reference made a part hereof.

The language of the questions and answers is clear and unambiguous and unmistakably indicates that the understandings reached were as summarized below:

1. For every class of road freight service, without regard to whether or not assigned, all side trips, lap-backs, doubles, runs for fuel and water, and every other like service between terminals, were to be integrally coupled with the straightaway (or turn-around) trip and together paid for on the basis of over-all time and aggregate mileage. (See questions Nos. 1-24-36-37 and answers thereto.)
2. When combinations of two or more classes of service were performed on a trip, compensation was to be paid on the basis of the aggregate time and mileage of all services performed, at the straight and overtime rates applicable to the highest rated service performed on the trip. (See question 1 and answer thereto.)
3. Time spent in switching at intermediate points was in all instances to be added to time of the trip, paid for as a part of the total time, and not paid for as a separate service, and this without regard to whether yard crews were employed at the points or not. (See questions Nos. 1-19-36 and 40 and answers thereto.)
4. For switching performed at initial and final terminals (without distinction as to whether yard crews were or were not on duty), the arbitraries, as and where provided by schedule, were retained. The prohibitions, found in a very few schedules, against switching by road crews in initial and final terminals where yard crews were employed, were not disturbed. The more prevalent provisions for separate payment to road crews for time spent in such switching were not disturbed. The many instances of schedules which neither prohibited such switching nor required separate payment therefor, in the application of which all time spent in such switching was paid for as a part of the road crew's over-all time (whether yard crews were employed at the ter-

minals or not), were not disturbed. (See questions Nos. 13-14-15-16-17-19-36 and 40 and answers thereto.)

Under these understandings, the time and one-half basis for overtime was established by Supplements Nos. 24 and 25 to General Order No. 27. These supplements were issued December 15, 1919, effective December 1, 1919. **Supplement No. 24 dealt with the engineers and firemen;** Supplement No. 25 dealt with the conductors and trainmen. **Article VII, Supplement No. 24, and Article VI, Supplement No. 25, fixed the basic day;** Article X specifically abolished all arbitraries and special allowances between terminals for service other than passenger; Article XI provided affirmatively for payment on the continuous time basis from the time required to report for duty until the time of release at the end of the day or trip. Article X of Supplements Nos. 24 and 25 provided in part as follows:

“(a) Excepting payments under rules applying to work performed at initial and final terminals, and to final terminal delays, all arbitraries and special allowances applying to road service other than passenger, under rules, regulations, or practices, which conflict with the payment of single time, in miles or hours, from the time required to report for duty until released from duty at the end of the trip shall be eliminated.”

The Railroad Administration ordered that the provisions of Supplements Nos. 24 and 25 be incorporated into existing agreements and into agreements which might be reached in the future, which meant the elimination from all agreements of rules or practices which provided for arbitrary or special allowances to road freight crews for work performed between terminals which in any way conflicted with the payment of single time in miles or hours from the time required to report for duty until released from duty at the end of the trip.

The agreements in effect on this property prior to December 1, 1919 contained the following rules:

**Engineers: K & M January 1, 1919:**

“ARTICLE 5.

(c) Road engineers, firemen and helpers required to perform a combination of more than one class of road service during the same trip will be paid at the rate and according to the rules governing each class of service for the time or miles engaged in each, but will be paid for the entire trip not less than a minimum day at the highest rate applying for any class of service performed during such trip. 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.”

“ARTICLE 67.

Actual mileage for doubling will be allowed with minimum of ten miles. This will be in addition to any overtime otherwise made.”

“ARTICLE 68.

A minimum of 10 miles will be allowed in addition to trip mileage for all side trips not over ten miles; over ten miles actual mileage will be allowed.”

**Firemen and Hostlers: K & M January 1, 1919:**

“ARTICLE 5.

(c) Road engineers, firemen and helpers required to perform a combination of more than one class of road service during the same trip will be paid at the rate and according to the rules govern-

ing each class of service for the time or miles engaged in each, but will be paid for the entire trip not less than a minimum day at the highest rate applying for any class of service performed during such trip. 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 will be paid for the entire day or trip."

**"ARTICLE 29.**

Actual mileage for doubling will be allowed with a minimum of 10 miles. This will be in addition to any overtime otherwise made."

**"ARTICLE 30.**

Minimum of 10 miles in addition to trip mileage will be allowed for all side trips not over 10 miles; over ten miles actual mileage will be allowed."

When the agreements in effect on this property were revised to conform to the provisions of Supplement No. 24, effective December 1, 1919, the above-quoted rules were superseded by the following rules which are still in effect:

**Engineers: K & M: Article 7(c):**

**Firemen and Hostlers: K & M: Article 9(c):**

"Road engineers (firemen and 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 with a minimum of 100 miles for the combined service. The overtime basis for the rate paid will apply for the entire trip.

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 shall be paid for the entire day or trip."

**Engineers: K & M: Article 32:**

"Actual mileage will be allowed for doubling and side trips, such mileage to be added to the actual mileage of the trip and overtime based on 12½ miles per hour."

**Firemen and Hostlers: K & M: Article 15(d):**

"Actual miles will be allowed for all side trips and doubling of all hills, such mileage to be added to mileage made on the trip and paid for in accordance with Article 9(a)."

It will be observed that Article 7(c) of the Engineers' Agreement, and Article 9(c) of the Firemen's Agreement in evidence in this dispute are identical to the rules established by the United States Railroad Administration as Section (c) of Article VII, the Basic Day and Overtime Rule, of Supplement No. 24 to General Order No. 27.

The minimum allowance of ten miles for doubling and for side trips stipulated in Article 67 and 68 of the January 1, 1919 Engineers' Agreement, and in Articles 29 and 30 of the January 1, 1919 Firemen's Agreement was eliminated when those rules were superseded by Article 32, Engineers, and Article 15(d), Firemen, when the respective agreements were revised to conform to the provisions of Supplement No. 24. Those rules—Articles 32 and 15(d) are still in effect and provide for nothing more than the actual mileage allowance for doubling or for making a side trip, whether the additional mileage thus made is greater or less than the ten-mile minimum allowance in effect prior to the effective date of Supplement 24.

In other words, the intent and application of the rules revised to comply with Supplement 24, effective December 1, 1919 did not then and do not now, in any way whatsoever, change the method of payment for doubling or for side trips involving more than ten miles.

The principles of Article 32, Engineers, and Article 15(d), Firemen and Hostlers, have been consistently applied in all instances where service was required of road freight crews similar to the work performed by claimant engine crew on October 18, 1946 and such service has been properly paid for on the continuous time and mileage basis as definitely intended by the rules.

The employees on this property have heretofore recognized that the terms of the settlement reached with the Director General and the subsequent revisions of their agreements were binding but now, 28 years later, they seek to obtain from your Board, which is not clothed with authority to grant new rules, change existing rules or place new meanings on rules which have long been applied in a recognized and accepted manner, an additional payment of 100 miles for incidental work between terminals for which continuous time and mileage have been paid in every instance since the rules were revised effective December 1, 1919, as ordered by the Railroad Administration.

The answers from the Railroad Administration show unmistakably that all arbitrary and special allowances conflicting with the payment of single time in miles or hours from the time on duty until the time off duty at the end of the trip were definitely eliminated and it is clearly obvious that it was not intended that the arbitraries so eliminated would later be superseded by the payment of an arbitrary of 100 miles. There is not a thing in Supplement 24 nor in any rule or understanding reached subsequent thereto which would provide any method of payment other than continuous time and mileage for work performed between terminals by road freight crews.

As set forth in the carrier's statement of facts, the claimants, on October 18, 1946, were called from the freight pool to handle a Hobson-Corning turn and, while en route, set out their train at Armitage, an intermediate point, moved light to Albany, another intermediate point 11 miles south of Armitage, there assisted in rerailling tender of Engine 2264, then returned to Armitage, picked up their train and continued their Hobson-Corning turn; in other words, they performed a combination of through freight and wrecking service in the same day or trip and this was not in violation of the agreements.

The through freight and wreck train rates of pay applicable on this property are the same. Claimant engineer and fireman were properly paid at the through freight rates of pay for the entire trip.

The combination of service rule which is now Article 7(c) of the controlling Engineers' Agreement and Article 9(c) of the controlling Firemen's Agreement appeared as Article 7(c) of Supplement No. 24 to General Order No. 27, whence it was incorporated into the agreements applicable here. The manner in which it was intended that the rule should be applied in cases like the one now before the Board where in the rates of pay are the same for two or more classes of road service performed between terminals, was stipulated in memorandum of understandings reached at conference at Washington, D. C., from December 2 to 13, 1919, between the Directors of the Division of Operation and Labor of the U. S. R. R. Administration and the chief executives of the four engine and train service organizations, accompanied by a special committee of general chairmen of the same organizations. The following answers to questions asked under Article 5, Supplement No. 24 clearly indicate in plain and unambiguous language that payment at the through freight rates on the continuous time basis is all that is required:

"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 here-

tofore have been recognized as two services or for which special allowances has been paid.

(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. (Emphasis added.)**

(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." (Emphasis added.)**

The above answers should be convincing evidence that wreck or work train and through freight service performed on the same trip are properly paid on the continuous time basis at the through freight rates, and that wreck, work train or through freight service performed between terminals are all road service. The note following the Question and Answer No. 54 in Interpretation No. 1 to Supplement No. 24, reading—

**"In the combination of more than one class of road service, time is computed continuously."**

is also clearly evidentiary of the intent of the December, 1919 understandings.

The same clear intent with respect to payment to road freight crews required to perform unclassified service between terminals, or to road crews in unclassified service required to perform freight service en route between terminals where the rates are the same is also readily evidenced by Article 10(a) of Supplement 24 which reads:

**"(a) Excepting payments under rules applying to work performed at initial and final terminals, and to final terminal delays, all arbitraries and special allowances applying to road service other than passenger, under rules, regulations, or practices, which conflict with the payment of single time, in miles or hours, from the time required to report for duty until released from duty at the end of the trip shall be eliminated."**

Adoption of Article 10 of Supplement 24 definitely eliminated any and all independent allowances to road freight crews who perform wrecking service or other incidental work of any kind en route between terminals, and clearly provides that miles made in performing any such incidental road service were to be added to the mileage run and that only total mileage should be paid for. In the event the total mileage so calculated was 100 miles or less a minimum day should be allowed with overtime after 8 hours if total time from the time required to report for duty until released at the end of the trip exceeded 8 hours, and if total mileage so calculated was more than 100 miles the excess over 100 miles was payable at regular mileage rates with overtime to begin when the time on duty from the time required to report for duty until released at the end of the trip is greater than the total miles divided by 12 ½.

Such interpretations are manifestly applicable to the services performed by claimant engine crew in this case, as the agreements in evidence include

no specific rules continuing or establishing arbitrary or independent payments for so-called "back-laps", side trips, switching between terminals and similar incidental work performed by road freight crews after leaving the initial terminal.

Engine and train crews performing any such freight service between terminals were to be paid only "single time, in miles or hours, from the time required to report for duty until released from duty at the end of the trip."

The claimants were so paid for services performed October 18 and 19, 1946, as referred to in this claim.

The employees, through the medium of the instant claim and other similar claims recently submitted, are attempting not to restore the arbitrary or special payments specified in the agreements in effect prior to December 1, 1919, but rather are asking for an arbitrary payment of a minimum day of 100 miles in addition to the regular earnings of the trip, disregarding the fact that if the agreements in effect prior to December 1, 1919 had provided for arbitrary payments of 100 miles those arbitraries would have been eliminated by Supplement 24.

Their request disregards every fair and reasonable principle upon which collective bargaining should be founded.

The mileage of the turn-around trip, Hobson to Corning to Hobson, is 114 miles. The mileage, Armitage to Albany and return to Armitage is 22 miles. Claimants were, therefore, entitled only to payment under the rules for 136 miles (114 plus 22) with overtime to begin when total time from time required to report for duty until released at the end of the trip is greater than total miles divided by 12½.

#### 4. AWARDS OF THE NATIONAL RAILROAD ADJUSTMENT BOARD SUPPORT THE CARRIER'S POSITION.

In the First Division Award 2126, B. L. E. vs. M. St. P. & S. St. M. Rwy. Co., this Board denied the claim of a regularly assigned passenger engineer for an additional 100 miles because he was required to detach his engine and assist in rerailling the engine of another train and, in the Findings, stated:

"The record discloses that Engineer Nicholson after leaving the terminal performed more than one class of road service for which he was compensated under provisions of Article 14, Engineers' Agreement."

First Division Award 5396 involved a dispute on the Colorado & Southern Railway Co., in which an engineer and fireman claimed 100 miles at through freight rates for a lap back trip to help a train with excess tonnage. Claimants on a through freight run between Cheyenne and Guernsey were instructed to set out their train at Diamond, an intermediate point, and help the other train in the opposite direction from South Diamond to Altus; claimants then returned light to Diamond, picked up their train and continued their trip to Guernsey, the final terminal. The Board denied the claim with Robert G. Simmons as referee. The Findings, 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."

are particularly relevant to the circumstances of the instant claim as, since the revision of the agreements in 1919, it has not been the practice on this property to pay road freight crews required to double any portion of the road for any reason on other than the continuous time and mileage basis.



First Division Award 9574 involved claim of engineer and fireman on the Northwestern Pacific Railroad, assigned to passenger service, for 100 miles at freight rates account required en route between terminals to cut off their engine, proceed from the north end of a tunnel, about six-tenths of a mile in length, to the south end, assist in rerailing a derailed freight car near the south end of the tunnel, then return to the north end of the tunnel, pick up their passenger train and continue their passenger assignment. Such movement and so-called wrecking service consumed about 4 hours, 10 minutes. Claimants were paid on continuous time basis at through freight rates, higher than the passenger rates. The Board with Referee Fred L. Fox denied the claim and said in part:—"We can see no practical distinction between ordinary work train service \* \* \* and the wrecking service here involved."

First Division Award 8087 involved claim on the C. M. St. P. & P. Railroad for payment of minimum day in work train service plus minimum day and fifty minutes final terminal delay in revenue freight service to a fireman assigned to work train service between Ellensburg and Cle Elum, required to handle freight train tied up under the Hours of Service Law, from Thorp, an intermediate point 7 miles west of Ellensburg, to Cle Elum. Claimant was paid continuous time from time on duty at Ellensburg until released at Cle Elum. The employees contended freight service was separate and apart from work train service and not subject to the Combination of Service Rule. The carrier contended that the claim was not justified under any rule, settlement or agreement, and that for many years such services by road crews between terminals had been combined and paid for on the continuous time basis. The Board denied the claim. The Combination of Service Rule on the C. M. St. P. & P. involved in Award 8087 was the same as the corresponding rule applicable to this claim from the New York Central engine crew; also, the rates of pay for through freight service and for work train or wreck service performed were the same on the C. M. St. P. & P. In this case now before the Board the rates of pay for through freight service and for wreck service or work service are likewise the same.

First Division Award 10748 involved claim of Southern Pacific Company engineer for local rate of pay in lieu of through freight rate when required on four separate dates while in through freight service to perform work train service en route between terminals of his through freight run. The rates of pay on the Southern Pacific for through freight service and for work train service and wreck service were the same. The Board with Referee Sidney St. F. Thaxter sustained the claim for local rate of pay in one of the four instances because of a specific rule provision applicable in that one instance, but denied the claims for local rates in the other three instances and said in part: "The claimant performed a combination of work train and through freight service and has been paid therefor."

First Division Award 11609 involved claims of engineer and fireman on the Wabash Railroad, in pool freight service between Moberly, Mo., and Moulton, Iowa, who upon arrival at LaPlata, an intermediate point 43 miles west of Moberly, the home terminal, were required to take their engine and assist in rerailing AT&SF engine derailed at a spur track on the joint interchange track; total time consumed was approximately 35 minutes; after assisting to rerail the engine they returned, picked up their train and continued their freight trip to Moulton. Claimants were paid on continuous time basis at local rates in accordance with the applicable rules. Employees claimed additional 100 miles at through freight rates account having been run off their assigned territory to rerail the engine. The Board with Referee Wm. H. Spencer denied the claim and in the Findings stated:

"The evidence of record does not support the claim that these employees were 'run off of their assigned territory' within the meaning of Article 2(G) of the Agreement between the parties."

In the case now before the Board, claimant engineer and fireman did not perform any service off of their assigned territory; they simply performed through freight service and wrecking service en route between terminals and were properly paid for all services performed at through freight rates on the

continuous time basis in accordance with the plain language of the applicable rules covering engineers and firemen on the K. & M. Rwy. and official interpretations relative thereto.

In Award 11922 the Board with Referee Wm. H. Spencer denied the claim for 100 miles for work train service performed by a Southern Pacific engineer in pool freight service between "T" and "C" account having been required to set his train out on the siding at an intermediate point, pick up nine cars of slag, move them about 5 miles west for unloading by Maintenance of Way employes, then return the empty cars to that same intermediate point, place them on the siding, after which he picked up his train and continued the trip to "C". He was paid on a continuous time basis at through freight rate but claimed a minimum day's pay for work train service in addition to regular pay for the day in question.

The same award also denied similar claim of another engineer who performed Maintenance of Way service en route between terminals of his pool freight run.

In the instant case, claimant engine crew performed wrecking service at an intermediate point, whereas in Award 11922 claimants performed work train and Maintenance of Way service. The principle involved and the circumstances surrounding the two classes of road service performed between terminals by the claimants in that Southern Pacific case are identical to those of the instant case and the findings of Referee Spencer in Award 11922 fully uphold the carrier's contention in this case that Claimant Engineer Meadows and Fireman Nelson were likewise paid in accordance with the rules and that claim for additional payment of 100 miles is not justified and not proper.

The several awards hereinbefore cited cover different type of service performed between terminals, and the applicable rules on the different railroads involved vary to some extent, but the over-all principle consistently recognized in these and in numerous other awards sustains the carrier's position that payment of all arbitraries and special allowances to road service employes in freight service were definitely eliminated and that payment of continuous time from the time required to report for duty until released from duty at the end of the trip is proper.

In addition to Award 7057 cited by the carrier in Item No. 1 of its position, the First Division has recognized and stated its lack of authority to grant new rules or revise or amend rules of existing agreements, in various other awards including Awards 700-704, inclusive, in which the Board said:

"This Division is without authority to change existing Agreements between the carriers and their employes, or to establish new agreements or working conditions. Its authority is limited to the interpretation of the application or misapplication of existing agreements between the carriers and their employes."

In further support of its position that the claim herein presented by the employes is a request to controvert a past practice of long standing and that past practice is controlling, the carrier directs attention to the findings of the Division in its Awards Nos. 275, 1294, 1828, 4173, 4232, 4234, 7615, 8145, 8169, 9033, 9252 and 9291, by reference made a part of this submission and which are in part as follows:

**Award No. 275:**

"\* \* \* the evidence shows that such work has been handled by Pasco crews when making straight away trips in the same territory. Under the circumstances existing and past handling, this claim should not be sustained." (Emphasis added.)

**Award No. 1294:**

"The evidence of record does not disclose any violation of the prevailing rules as long applied and accepted on this property

in the performance of and payment for freight service rendered by passenger crews." (Emphasis added.)

**Award No. 1828:**

**"Claim is a request for departure from a practice in effect on this line for more than 15 years."** (Emphasis added.)

**Award No. 4173:**

**"\* \* \* There are many practices as to which the schedules are silent, but which constitute just as much a part of the agreements as though they were incorporated, indeed it would require almost an encyclopedia to specify all such existing practices. Nevertheless, it is an elementary rule of the law of contracts that when parties make an agreement rested on a condition of affairs not even mentioned in the agreement, one party to such contract may not by unilateral action so alter these conditions as adversely to affect performance by the other parties."** (Emphasis added.)

**Awards 4232 and 4234:**

**"There is a cardinal rule of interpretation of contracts to the effect that where an agreement is equally susceptible of two meanings, one of which would lead to a sensible result and the other to an absurd one, the former will be adopted. Another important rule is that the conduct of the parties under the agreement over a period of time is evidentiary of their intent."** (Emphasis added.)

**Award No. 7615:**

**"As said by Judge Swacker in Award 4234, it becomes a question of actual intent of the parties and that can be best ascertained by the conduct of the parties over a period of years."** (Emphasis added.)

**Award No. 8145:**

**"It appears that the practice of the carrier complained of began over twelve years ago. The claims were not filed until 1941. Such a delay indicates concurrence in construction of agreement made by carrier."** (Emphasis added.)

**Award No. 8169:**

**"Working for ten years without protest under carrier's construction of agreement must be construed as a concurrence therein."** (Emphasis added.)

**Award No. 9033:**

**"For better than twenty years this established and universally accepted practice on this property covering the rule and dispute, was interpreted by the parties contrary to that contended for by claimant. It necessarily follows that an affirmative award is not justified."**

**Award No. 9252:**

**"But if a rule is ambiguous and of doubtful meaning or of doubtful application, then a continuous and prolonged practice under the rule would be considered as a practical interpretation of that rule by the parties themselves, and the rule would be interpreted in harmony with interpretation and practice."**

Also in Award No. 9291, Referee Richard F. Mitchell speaking for the First Division denied the claim and, in the Findings, made reference to the

opinion of Referee R. G. Corwin in connection with Award 1082, which was in part as follows:

"There is and can be no stronger indication of what interpretation this Division in any case of doubt should adopt than that which the parties have given a rule, and a practice, uncontested over a period of years, must justly be regarded by each party as indicating the course of conduct for it to follow \* \* \* **The carrier in the disputes we are now discussing has just as much right to rely upon an accepted interpretation as the committee had \* \* \*, and we cannot disregard an uncontroverted custom of twenty years.**" (Emphasis added.)

### CONCLUSION

The carrier has shown that:

1. This claim is not valid under applicable agreement rules and is, in fact, a request for a new and unwarranted rule; the Board should not assume jurisdiction of the claim and, if such jurisdiction is assumed, the claim should be denied; because
2. Road freight crews on this property have not at any time been paid an additional 100 miles when required to double any portion of the road or perform wrecker service between terminals; prior to December 1, 1919, actual mileage or the minimum specified in rules then in effect was paid; subsequent to December 1, 1919, when all arbitraries were definitely abolished, all such service has been properly paid for on the continuous time basis;
3. Official Interpretations of the rules and awards of the National Railroad Adjustment Board refute the claim;
4. The claim is totally without merit on any technical or reasonable premise.

All evidence and data set forth in this dispute have been considered by the parties in conference.

Oral hearing is not desired by either party.

**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 employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

The claim is premised on the contention that the engine crew made a separate trip, which was not a part of its assignment and for which the scheduled rules authorize an additional day's pay. Claimants rely, principally, upon Article 9 (a) of the engineers' agreement. This paragraph defines the basic day for each of the classes of service covered by Article 7. The crew involved was assigned to a pool handling all unassigned road service in its territory. On the day in question the crew was called for a through freight turn-around trip, one of the classes of road service enumerated in Article 7. While en route they made a lap-back trip in wrecking service, a class of service also included in Article 7. While no rule has been cited that limits the work in this instance solely to the road service for which called, there might be some substance to the claim but for paragraph (c) of Article 9.

Single provisions of an agreement should not be considered separately, but each provision of an agreement must be applied in reference to all other provisions in order to give effect to each in accordance with the intent of the parties. Paragraph (c) of Article 9 provides, in part, that "Road engineers, firemen, and 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 \* \* \*." This is a limitation upon the general provision of paragraph (a).

The "day or trip" referred to in paragraph (c) is the day or trip which begins and ends as provided in Article 11. The movement in wrecking service with which all are here concerned is not such a trip.

In interpreting an agreement special attention should be given to the expressed intent of the parties when the agreement was formed. Article 69 authorizes the application of the official interpretations of General Order 27, U. S. Railroad Administration, and from such we conclude that, except for specific provisions of the agreement authorizing the contrary, the intent was to provide pay on a single time basis plus the overtime rate when applicable. There is no provision of the agreement on this property providing special allowance for a lap-back as here described.

It must be noted that we are not here concerned with the assessment of reparations because the crew which stood first out was not called in its turn for the wrecking service.

However, the organizations cite Award 14841 in support of their contention. The claims therein presented arose from the same property, were based on facts similar to those now before the Board, and presented the identical problem. Such precedent cannot be ignored and must be followed unless clearly in error. We have carefully examined Docket 23700 and the Findings in Award 14841, and have reluctantly reached the conclusion that those Findings are not appropriate here. For the reasons hereinabove expressed we have concluded that claim is not supported by the agreement.

**AWARD:** Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FIRST DIVISION

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

Dated at Chicago, Illinois, this 19th day of December, 1951.