

**Award 19372**

**Docket 31081**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FIRST DIVISION**

39 South LaSalle Street, Chicago 3, Illinois

With Referee John F. Sembower

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**THE DENVER AND RIO GRANDE WESTERN**

**RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of Brakemen G. W. Black and R. E. Gardner for one day's pay each date, June 5, 7, 12, 13, 14 and 18, 1952, account Tintic Local assignment changed and improperly bulletined. Article 64 of Trainmen's Schedule and Article 13—Moratorium of National Settlement, May 25, 1951."

**EMPLOYES' STATEMENT OF FACTS:** Prior to the dates of the claims the claimant crew was in assigned service on the Provo-Eureka or Tintic Branch; home terminal, Provo, away-from-home terminal, Eureka. The crew operated out of Provo on Mondays, Wednesdays and Fridays; out of Eureka, Tuesdays, Thursdays and Saturdays, under the following tabulation contained in Article 5 (C) of the Trainmen's Schedule:

**RATES OF PAY—FREIGHT SERVICE**

Mixed and Miscellaneous Service

**TRAINMEN**

	Per Mile Cents	Per Day Dollars	
"Provo-Eureka.....	13.39	13.39	Assigned crew— working day month."

The following correspondence was exchanged prior to the change in the assignment, which is in dispute:

"THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY

Denver 1, Colorado

March 6, 1952

C&B-G-266

"Mr. O. E. Sevier,  
General Chairman, ORC,  
Grand Junction, Colorado.

Mr. R. E. Carroll,  
General Chairman, BRT,  
Denver, Colorado.

Gentlemen:

As a matter of information and to confirm verbal advice previously given you, the Company contemplates when additional Diesel engines, now on order, become available the latter part of June to provide two all purpose F-7s at Provo and in order to secure maximum utilization of this power, use it to protect Tintic Branch days and on Provo tramp jobs and Heber Branch nights as required.

Present assignment on the Tintic Branch (tabulated Provo-Eureka) provides for straight-away service leaving Provo Monday, Wednesday and Friday; Eureka, Tuesday, Thursday and Saturday, Sunday layover at Provo. Effective with use of Diesel power, Carrier intends to cancel present straight-away assignment and inaugurate a new turnaround freight assignment with limits Provo and Springville on the main line, Eureka on the Tintic Branch and Dividend on the Goshen Valley Branch, 6 day per week assignment, only terminal and Sunday layover at Provo.

Under provisions of Article 36 (b) of Conductors' Schedule and Article 64 of Trainmen's Schedule crew to be paid same rate of pay as on present straight-away Provo-Eureka assignment.

Yours truly,

(S) E. B. Herdman  
E. B. HERDMAN  
Manager of Personnel"

LGH:pf

"May 23, 1952

"Mr. E. B. Herdman  
Manager of Personnel, D&RGW RR  
1531 Stout Street  
Denver 1, Colorado

Dear Sir:

Referring to your letter of March 12, 1952, File C&B-G-266, relative to your proposal to change the present Tintic Branch assign-

ment, tabulated Provo-Eureka, from straight-away to turn-around service.

It is our position that the Carrier does not have the right to change this assignment under Article 64 without negotiation. Moreover, this proposal constitutes a change in working conditions and would be in violation of Article 13—Moratorium—National Settlement of May 25, 1951.

Yours truly,

(S) R. E. Carroll  
R. E. CARROLL  
General Chairman

cc: Mr. D. K. Baker  
Mr. P. D. Bills  
Mr. O. E. Sevier"

General Chairman, O. E. Sevier, ORC, made a similar protest to the proposed change, also, in writing the Superintendent as follows:

"ORC-1  
Provo-Eureka  
May 29, 1952

"Mr. G. B. Aydelott,  
Superintendent, D&RGW RR.,  
Salt Lake City, Utah.

"Dear Sir:

This will acknowledge receipt of your letter of May 27, 1952, File 530, in reply to mine of May 22, 1952, File ORC-1, Provo-Eureka.

Apparently you have either overlooked, or choose to ignore, the provisions of Articles 15 (c) and 36 (b) of the O.R.C. Schedule of Agreement.

We also direct your attention to Article 13,—MORATORIUM, contained in the Agreement of May 23, 1952, between the Carriers' Conference Committees and the Order of Railway Conductors, which provides there will be no change in rates of pay, rules, or WORKING CONDITIONS, for a period of three years from October 1, 1950, except by mutual agreement.

Your actions in arbitrarily changing this assignment without agreement leaves us no alternative but to instruct the men involved to claim time the same as if the old assignment were still in effect.

It will be determined later just what further action we will take in this matter.

Yours truly,

(S) O. E. Sevier  
O. E. Sevier,  
General Chairman, ORC

cc: Mr. E. B. Herdman  
cc: Mr. R. F. Nicholl  
cc: Mr. R. E. Carroll"

Despite our objections the Carrier posted a bulletin May 19, 1952, changing the assignment as stated in Mr. E. B. Herdman's letter of March 6, from straight-away to turn-around service. That is to say, the away-from-home terminal, Eureka, was discontinued and the crew required to make a round trip 6 days per week over the prescribed territory, tying up at Provo each night. In doing so the crew assigned is now required to work both ways over the territory in one day which formerly required two days.

As a result the crew claimed time which was appealed and handled as shown in the following correspondence:

"Salt Lake City  
June 30, 1952

"Officers and Members  
B.R.T. 471  
Salt Lake City, Utah

Dear Sirs and Brothers:

Enclosed please find decline slips for which I wish to submit to the Lodge 471 and request that this matter be handled as a grievance.

The decline slips are in answer to my submitting time slips for 100 miles for every day not used on regular assignment on the Tintic Local.

On May 19, 1952 a circular #62 changed the assignment and it is my belief that this is a violation to Article #64 enclosed in Schedule of agreement for trainmen.

The circular #62 stated only the time and not the definite dates in Provo or Eureka.

Yours truly,

(S) G. W. Black  
G. W. Black"

"Salt Lake City, Utah  
August 5, 1952

"Mr. G. B. Aydelott  
Superintendent D&RGW RR  
3rd South and Rio Grande Ave  
Salt Lake City 1, Utah

"Dear Sir:

Referring to claim of Brakemen G. W. Black and R. E. Gardner for one days pay each date June 5, 7, 12, 13, 14 and 18, 1952 account Tintic Local improperly bulletined.

We contend carrier does not have the right to change this assignment under article 64 without negotiation and are in violation of article 13—Moratorium—National Settlement of May 25, 1951.

Therefore I request these and all subsequent claims be allowed.

For your consideration and reply.

Yours truly,

(S) P. D. Bills  
P. D. Bills  
Local Chairman  
Lodge 471 B of R T

cc: R. E. Carroll  
D. K. Baker"

"Salt Lake City, August 29, 1952.

013.3—Spl. 58

"Mr. P. D. Bills,  
Local Chairman, B. of R. T.,  
2234 South 19th East,  
Salt Lake City.

Dear Sir:

I have your letter of August 5, submitting claim of Brakemen G. W. Black and R. E. Gardner for one day's pay each date, June 5, 7, 12, 13, 14 and 18, 1952, account Tintic Local improperly bulletined.

These claims are declined. Do not consider contract was violated.

Yours truly,

(S) G. B. Aydelott  
G. B. Aydelott,  
Superintendent

cc: Mr. R. E. Carroll"

"September 16, 1952

FILE—821/2

"Mr. E. B. Herdman  
Director of Personnel, D&RGW RR  
1531 Stout Street  
Denver 1, Colorado

Dear Sir:

The following case is appealed to you from decision of Superintendent—Salt Lake Division:

'Claim of Brakemen G. W. Black and R. E. Gardner for one day's pay each date, June 5, 7, 12, 13, 14 and 18, 1952,

account Tintic Local assignment changed and improperly bulletined. Article 64 of Trainmen's Schedule and Article 13—Moratorium of National Settlement, May 25, 1951.'

Yours truly,

(S) R. E. Carroll  
R. E. CARROLL  
General Chairman

cc: Mr. G. B. Aydelott  
Mr. P. D. Bills"

"THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY

P. O. Box 2040

Denver 1, Colorado

Personnel Department

October 27, 1952

B-112-52

"Mr. R. E. Carroll,  
General Chairman, BofRT,  
Denver, Colorado.

Dear Sir:

Your letter September 16, 1952, File 821/2, appealing "from decision of Superintendent-Salt Lake Division and our conference October 9, 1952, in connection with the following case:

'Claim of Brakemen G. W. Black and R. E. Gardner for one day's pay each date, June 5, 7, 12, 13, 14 and 18, 1952, account Tintic Local assignment changed and improperly bulletined. Article 64 of Trainmen's Schedule and Article 13—Moratorium of National Settlement, May 25, 1951.'

"The new assignment of which you complain was established strictly in accord with the provisions contained in the first two paragraphs of Article 64 Trainmen's Schedule. Article 13—Moratorium, of the Agreement signed at Washington, D. C., May 25, 1951 is not involved.

"Claim denied.

Yours truly,

(S) E. B. Herdman  
E. B. HERDMAN  
Director of Personnel

LGH:pf"

"THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY

P. O. Box 2040  
Denver 1, Colorado  
Personnel Department

December 22, 1952

B-112-52

"Mr. C. Luna  
Deputy President, BRT  
218 Majestic Bldg.  
Fort Worth, Texas

Mr. R. E. Carroll  
General Chairman, BRT  
Denver, Colorado

Gentlemen:

"Your File 821/2 reading:

'Claim of Brakemen G. W. Black and R. E. Gardner for one day's pay each date, June 5, 7, 12, 13, 14 and 18, 1952, account Tintic Local assignment changed and improperly bulletined. Article 64 of Trainmen's Schedule and Article 13—Moratorium of National Settlement, May 25, 1951.'

"It was agreed in final conference December 20, 1952, this case would be submitted to N.R.A.B., First Division, or Special Board of Adjustment.

Yours truly

(S) E. B. Herdman  
E. B. Herdman  
Director of Personnel"

LGH:iha

The following bulletin was posted superseding the original Bulletin No. 62, which did not state definite days and of which no copy is available:

"OFFICE OF DIVISION TRAINMASTER  
SALT LAKE DIVISION  
CIRCULAR NO. 102

Salt Lake City, August 6, 1952.

"CONDUCTORS AND TRAINMEN,  
ENGINEERS AND FIREMEN—

Bids will be received in office of Chief Crew Dispatcher, Roper, up until 12:01 P. M., August 11, 1952, for Conductor, Rear and Head Trainmen for freight assignment in turn-around service. Home terminal Provo. Daily except Sunday service. Only terminal and Sunday layover at Provo. Limits Provo and Springville on main line,

Eureka on Tintic Branch, including Goshen Valley Branch. Starting time 8:00 A. M. (On duty 7:45 A. M.).

C. D. Miller,  
Division Trainmaster

"This will serve as notice to Engineers and Firemen of above proposed assignment. Applicants will place themselves in accordance with seniority.

CDM"

Oral hearing waived unless desired by the Carrier.

**POSITION OF EMPLOYES:** Article 64 of the current Trainmen's Schedule of Agreement reads as follows:

**ARTICLE 64—Establishing New Runs**

"The Company is not prohibited by any Article or provision of this Agreement from establishing new runs, or new assignments. Notices calling for bids on any new run or new assignment must state definite limits and must show number of days per week (6 or 7) to be worked and time crew will go on duty.

"Rates of pay for any new run or new assignment will be in accordance with rates for similar assignments on the same Sub-Division. If no similar assignment on the same Sub-Division, rates of pay will be a matter of negotiation between the designated General Officer and General Chairman of the Brotherhood of Railroad Trainmen.

"NOTE: Time for crews to go on duty will not be changed without at least 48 hours' notice. When time to go on duty is changed one (1) hour or more the assignment will be rebulletined."

Article 64, prior to the negotiation of the foregoing quoted Article 64 read as follows:

**ARTICLE 64—Establishing New Runs**

"In establishing new runs the proper general officer will notify the General Chairman of the Brotherhood of Railroad Trainmen and negotiate rates and conditions to cover the service. This rule not to prevent the railroad taking care of the demands of the service."

During the negotiation of the current Article 64, Mr. J. E. Kemp, Assistant General Manager, made the following counter-proposal to the Organization:

**"THE DENVER AND RIO GRANDE WESTERN RAILROAD CO.**

Wilson McCarthy and Henry Swan, Trustees

Denver—December 8, 1943.

"Mr. R. H. McDonald,  
General Chairman, BofRT  
Denver, Colorado.



Dear Sir:

Your letter May 26, submitting proposals for revision and consolidation of current Conductors' and Trainmen's Agreements:

One of the rules you have requested to be revised is Article 64, Establishing New Runs—Freight or Mixed Service. Please accept the following as a counter-proposal of the Carrier under the applicable provisions of the Railway Labor Act and Terminating Clause, current agreements, for revision of Article 64, both agreements:

#### ARTICLE 64

##### Establishing New Runs—Freight or Mixed Service

The Company is not prohibited by any article or provision of this Agreement from establishing new runs, or new assignments, or from discontinuing or re-arranging old assignments. Notices calling for bids on any new run, new assignment or re-arrangement of an old assignment must state definite limits and must show number of days per week (6 or 7) to be worked.

Rates of pay for any new run, new assignment or change in old assignment will be in accordance with similar rates for similar assignments on the same sub-division. If no similar assignment on the same sub-division, rates of pay will be through freight rates (plus conversion rates if local work as defined in Conversion Rule (5-D) is performed).

Yours truly,

(S) J. E. Kemp  
J. E. KEMP  
Assistant General Manager"

The Board will please note that this proposal states in part, "\* \* \* or from discontinuing or re-arranging old assignments. \* \* \*" The Organization was not agreeable to this clause, however, and it was not included in the new Article 64.

In the instant case the Carrier discontinued the method of assignment and re-arranged it from straight-away to turn-around service, changing the dates of departure from each terminal and, moreover, discontinued the away-from-home terminal. This is precisely what Mr. Kemp suggested in his counter-proposal and which the Organization refused. It is, therefore, our contention that when the Carrier unilaterally made these changes it was in violation of Article 64. It is also our contention that in making these changes and discontinuing a terminal the Carrier did change the working conditions of this assignment and is in violation of Article 13—Moratorium, National Settlement of May 25, 1951, which we quote in part:

"No proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employes, parties hereto, within a period of three years from October 1, 1950, except such proposals for changes in rules or working conditions which may have been initiated prior to June 1, 1950."

Therefore, the time claimed for days the assignment did not operate out of Eureka are just and should be allowed.

We respectfully refer the Board to its Awards 2331, 2604, 2606, 2607, 9366, 9487 and 9488, all of which involve the changing of assignments on this property. We specifically direct the Board's attention to its Findings in Award No. 9366, which are as follows:

"The First Division has heretofore held that in making assignments for train and engine service employes under agreement rules governing, that same shall be definite as to territory to be covered each day, the number of trips to be made out of the terminal and the time for crew to start work, all of which are necessary in the creation of an assignment in order that employes accepting same can determine the compensation for service not embraced within the scope of the assignment, and the Division so holds here.

"It is in evidence that the assignment here in question did not conform to the foregoing holdings. In these circumstances, an affirmative award is warranted.

#### AWARD

"Claim sustained."

In connection with the foregoing award it will be noted that bulletins 62 and 102 were not specific in their intent, especially in view of the fact that the Goshen Valley Branch stems from the Tintic Branch at Pearl for a distance of 6.5 miles and no mention is made in the bulletins on which days trips will be thereon.

In conclusion the employes submit that the Carrier by unilaterally re-arranging the assignment and discontinuing a terminal and in addition not bulletining the assignment properly is in violation of Article 64, Article 13—Moratorium—and disregarded the N.R.A.B., First Division, Awards referred to in this submission.

All data submitted in support of employes' position have been presented to the Carrier. The organization reserves the right to answer any data not previously presented by the Carrier.

**CARRIER'S STATEMENT OF FACTS:** Prior to May 26, 1952, the assigned train crew on the Provo-Eureka or Tintic Branch run a six-day assignment operated from Provo, Utah to Eureka, Utah on Monday, Wednesday and Friday and from Eureka to Provo on Tuesday, Thursday and Saturday with home terminal and Sunday layover at Provo, Utah.

The Provo—Eureka assignment is a tabulated assignment under Article 5 (c)—Mixed and Miscellaneous Service—of the current Trainmen's Agreement under the following tabulation:

#### TRAINMEN

	Per Mile cents	Per Day Dollars	
Provo-Eureka.....	13.39	13.39	Assigned crew working-day month

The Provo-Eureka assignment as it existed prior to May 26, 1952 covered the territory from Provo to Springville on Carrier's main line—a distance of five and four-tenths (5.4) miles and from Springville to Eureka, on the Tintic Branch, a distance of thirty-nine and seven-tenths miles (39.7) and the territory from Pearl Junction, an intermediate station on the line from Springville to Eureka, to Dividend, a distance of six and one-half (6.5) miles on the Goshen Valley Branch.

May 19, 1952 Circular No. 62 was issued by Carrier's Superintendent at Salt Lake City and read as follows:

**Circular No. 62**

Salt Lake City,  
May 19, 1952

Conductors and Trainmen  
Engineers and Firemen

Bids will be received in office of Chief Crew Dispatcher, Roper, up until 12:01 P. M., May 24, 1952, for Conductor, Rear and Head Trainmen, for new freight assignment in turn-around service. Home terminal Provo. Daily except Sunday service. Only terminal and Sunday layover at Provo. Limits Provo and Springville on main line, Eureka on Tintic Branch, including Goshen Valley Branch, starting time 7:30 A. M.

(S) G. B. Aydelott  
Superintendent

As result of the Carrier changing the Provo-Eureka assignment from a straight-away run to a turnaround assignment the instant claims were presented and denied by the Carrier.

**POSITION OF CARRIER:** In the Trainmen's Agreements prior to the Agreement of May 1, 1945 Article 64 read as follows:

"In establishing new runs the proper general officer will notify the General Chairman of the Brotherhood of Railroad Trainmen and negotiate rates and conditions to cover the service. This rule not to prevent the Railroad taking care of the demands of the service."

In the Trainmen's Agreement effective May 1, 1945 and in all subsequent Agreements with the organization Article 64 provided as follows:

**ARTICLE 64**

**Establishing New Runs**

The Company is not prohibited by any Article or provision of this Agreement from establishing new runs, or new assignments. Notices calling for bids, on any new run or new assignment must state definite limits and must show number of days per week (6 or 7) to be worked and time crew will go on duty.

Rates of pay for any new run or new assignment will be in accordance with rates for similar assignments on the same Sub-division. If no similar assignment on the same Sub-division, rates of pay will be a matter of negotiation between the designated General Officer and General Chairman of the Brotherhood of Railroad Trainmen.

NOTE: Time for crews to go on duty will not be changed without at least 48 hours' notice. When time to go on duty is changed one (1) hour or more the assignment will be re-bulletined.

It will be observed by your Honorable Board that present Article 64 differs greatly from Article 64 in effect prior to May 1, 1945.

On March 6, 1952 the Carrier advised the representatives of the two train service organizations on its property as follows:

March 6, 1952

C&BQ-G-266

Mr. O. E. Sevier,  
General Chairman, ORC,  
Grand Junction, Colorado.

Mr. R. E. Carroll,  
General Chairman, BRT,  
Denver, Colorado.

Gentlemen:

As a matter of information and to confirm verbal advice previously given you, the Company contemplates when additional Diesel engines, now on order, become available the latter part of June to provide two all-purpose F-7s at Provo and in order to secure maximum utilization of this power, use it to protect Tintic Branch days and on Provo tramp jobs and Heber Branch nights as required.

Present assignment on the Tintic Branch (tabulated Provo-Eureka) provides for straight-away service leaving Provo Monday, Wednesday and Friday; Eureka, Tuesday, Thursday and Saturday, Sunday layover at Provo. Effective with use of Diesel power, Carrier intends to cancel present straight-away assignment and inaugurate a new turn-around freight assignment with limits Provo and Springville on the main line, Eureka on the Tintic Branch and Dividend on the Goshen Valley Branch, 6 day per week assignment, only terminal and Sunday layover at Provo.

Under provisions of Article 36 (b) of Conductors' Schedule and Article 64 of Trainmen's Schedule crew to be paid same rate of pay as on present straight-away Provo-Eureka assignment.

Yours truly,

(S) E. B. Herdman  
E. B. HERDMAN  
Manager of Personnel

and in accordance with the provisions of the letter just quoted, the Superintendent of the Salt Lake Division issued Circular No. 62 dated May 19, 1952, which has heretofore been quoted.

It is obvious in changing the Provo-Eureka assignment from a straight-away run Provo to Eureka one day and return the next day—6 days per week—to a turn around basis Provo to Eureka and return, daily except Sunday, the Carrier established a new run or a new assignment, although the territorial limits of the assignment were not changed.

Being a new run it was therefore necessary as Article 64 provides to bulletin the assignment.

Circular No. 62 of May 19, 1952, which for ready reference is again quoted:

Circular No. 62

Salt Lake City  
May 19, 1952

Conductors and Trainmen  
Engineers and Firemen

Bids will be received in office of Chief Crew Dispatcher, Roper, up until 12:01 P. M., May 24, 1952, for Conductor, Rear and Head Trainman for new freight assignment in turn-around service. Home terminal Provo. Daily except Sunday service. Only terminal and Sunday layover at Provo. Limits Provo and Springville on mail line, Eureka on Tintic Branch, including Goshen Valley Branch, starting time 7:30 A. M.

(S) G. B. Aydelott  
Superintendent

meets squarely the provisions of the first paragraph of Article 64 in that definite limits of the assignment are shown, the number of days per week the assignment will work is shown as well as the time the crew will go on duty. In addition the terminal and Sunday layover point (Provo) are specified in the Circular. The rates of pay for brakemen on the new assignment were the same as on the old Provo-Eureka straightaway assignment.

The provisions of Article 64 are plain and the rule is not susceptible of ambiguity. It is not necessary for the Carrier in establishing new runs or assignments to negotiate same with the Trainmen Organization for the rule plainly states "The Company is not prohibited by any Article or provision of this Agreement from establishing new runs, or new assignments."

After the new run or assignment is established, if the rates of pay for same is not in accordance with rates for similar assignments, or if no similar assignment on the same Sub-Division then the rates of pay will, as Article 64 provides, be a matter of negotiation between the designated General officer and General Chairman of the Brotherhood of Railroad Trainmen. The rates of pay for brakemen, however, are not an issue in this case.

To substantiate the Carrier's statement that it is not necessary for Carrier under the provisions of Article 64 to negotiate with the Organization

when the Carrier establishes a new run or new assignment, the attention of your Honorable Board is directed to the fact that on May 10, 1945 the Carrier addressed a letter to all concerned outlining the changes in the Trainmen's Agreement effective May 1, 1945, from the agreement in effect prior to that date. The comment in this letter with respect to Article 64 read:

"Considerable change in this rule from the old agreements. Timekeepers and Divisions should note carefully the provisions of this new rule."

and in connection therewith the General Chairman of the Trainmen's Organization was not only furnished with a copy of the Carrier's letter of May 10, 1945, but was present when it was dictated; and had it been the understanding at that time that Article 64 required negotiation with the Organization, in event the Carrier established a new run or new assignment the General Chairman of the Trainmen would have so stated and insisted that our letter of May 10, 1945 contain that information.

Copy of Carrier's letter of May 10, 1945, showing copy to Mr. R. H. McDonald, the then General Chairman of the Brotherhood of Railroad Trainmen is appended hereto.

The Carrier asserts there is no justification for the instant claim. The provisions of Article 64 were strictly complied with in establishing the new turnaround assignment.

**CARRIER'S REBUTTAL STATEMENT TO SUBMISSION OF EMPLOYEES:** The employes, on Page 3 of their submission, quoting their letter of May 23, 1952 to the Carrier, state in part:

"It is our position that the Carrier does not have the right to change this assignment under Article 64 without negotiation."

The Employes during discussion of this case in conference did not, have not since and do not in their submission to your Board advance any argument or produce any proof that the Carrier did not have the right under Article 64 to make the assignment of which they complain. They cannot with good grace take such a position when the first sentence of Article 64 provides that:

"The Company is not prohibited by any Article or provision of this Agreement from establishing new runs, or new assignments."

The Carrier further asserts the provisions of Article 13—Moratorium—of the National Settlement of May 25, 1951 has no bearing on or application to the case at hand. Article 13 of the May 25, 1951 agreement did not in any manner prohibit making new assignments; neither did it freeze then existing assignments.

On page four and continuing on page five of their submission the employes state:

"Despite our objections the Carrier posted a bulletin May 19, 1952, changing the assignment as stated in Mr. E. B. Herdman's letter of March 6, from straight-away to turn-around service. That is to say, the away-from-home terminal, Eureka, was discontinued and the crew required to make a round trip 6 days per week over the prescribed territory, tying up at Provo each night. In doing so the crew assigned

is now required to work both ways over the territory in one day which formerly required two days.

“As a result the crew claimed time which was appealed and handled as shown in the following correspondence:”

and with respect thereto the Carrier did nothing in establishing the new assignment that is not provided for in Article 64 of the Agreement. No additional hardships were placed on the employes on the new turn-around assignment, neither were their earnings reduced. The employes on the Provo-Eureka assignment both prior and subsequent to May 26, 1952 lived at Provo and this is the first instance that has ever come to the Carrier's attention where the employes objected to the elimination of—and the resultant decrease in personal expense—an away-from-home terminal.

On Page 9 and continuing on Page 10 of their submission the Employes state:

The following bulletin was posted superseding the original Bulletin No. 62, which did not state definite days and of which no copy is available:

“OFFICE OF DIVISION TRAINMASTER”

SALT LAKE DIVISION

CIRCULAR NO. 102

Salt Lake City, August 6, 1952.

“CONDUCTORS AND TRAINMEN,  
ENGINEERS AND FIREMEN—

Bids will be received in office of Chief Crew Dispatcher, Roper, up until 12:01 P. M., August 11, 1952, for Conductor, Rear and Head Trainmen for freight assignment in turn-around service. Home terminal Provo. Daily except Sunday service. Only terminal and Sunday layover at Provo. Limits Provo and Springville on main line, Eureka on Tintic Branch, including Goshen Valley Branch. Starting time 8:00 A. M. (On duty 7:45 A. M.).

(S) C. D. Miller,  
Division Trainmaster

This will serve as notice to Engineers and Firemen of above proposed assignment. Applicants will place themselves in accordance with seniority.

C.D.M.

and with respect thereto the Carrier asserts the provisions of Circular No. 102, with exception of the dates and the starting time of the crew is almost identical with Circular No. 62. The Employes take no exception to Circular No. 102 and they cannot therefore consistently take any exception to Circular No. 62 which has heretofore been quoted.

On pages 10 and 11 of their submission the Employes state:

"During the negotiation of the current Article 64, Mr. J. E. Kemp, Assistant General Manager, made the following counter-proposal to the Organization:

THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY

Wilson McCarthy and Henry Swan, Trustees

Denver—December 8, 1943.

Mr. R. H. McDonald,  
General Chairman, B.ofR.T.  
Denver, Colorado.

Dear Sir:

Your letter May 26, submitting proposals for revision and consolidation of current Conductors' and Trainmen's Agreements:

One of the rules you have requested to be revised is Article 64, Establishing New Runs—Freight or Mixed Service. Please accept the following as a counter-proposal of the Carrier under the applicable provisions of the Railway Labor Act and Terminating Clause, current agreements, for revision of Article 64, both agreements:

ARTICLE 64

Establishing New Runs—Freight or Mixed Service

The Company is not prohibited by any article or provision of this Agreement from establishing new runs, or new assignments, or from discontinuing or re-arranging old assignments. Notices calling for bids on any new run, new assignment or re-arrangement of an old assignment must state definite limits and must show number of days per week (6 or 7) to be worked.

Rates of pay for any new run, new assignment or change in old assignment will be in accordance with similar rates for similar assignments on the same sub-division. If no similar assignment on the same sub-division, rates of pay will be through freight rates (plus conversion rates if local work as defined in Conversion Rule (5-D) is performed).

Yours truly,

(S) J. E. Kemp  
J. E. KEMP  
Assistant General Manager

"The Board will please note that this proposal states in part. \* \* \* or from discontinuing or re-arranging old assignments. \* \* \*"



The Organization was not agreeable to this clause, however, and it was not included in the new Article 64.

"In the instant case the Carrier discontinued the method of assignment and re-arranged it from straight-away to turn-around service, changing the dates of departure from each terminal and, moreover, discontinued the away-from-home terminal. This is precisely what Mr. Kemp suggested in his counter-proposal and which the Organization refused.

Irrespective of what the Employees have to say, regarding counter proposal of the Carrier with respect to Article 64 the end result was an agreed-to rule providing in part that:

"The Company is not prohibited by any Article or provision of this agreement from establishing new runs or new assignments."

On page 12 of their submission the Employees state:

"It is, therefore, our contention that when the Carrier unilaterally made these changes it was in violation of Article 64. It is also our contention that in making these changes and discontinuing a terminal the Carrier did change the working conditions of this assignment and is in violation of Article 13—Moratorium, National Settlement of May 25, 1951, which we quote in part:

'No proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the employes against any carrier or by any carrier against its employes, parties hereto, within a period of three years from October 1, 1950, except such proposals for changes in rules or working conditions which may have been initiated prior to June 1, 1950.'

Therefore, the time claimed for days the assignment did not operate out of Eureka are just and should be allowed."

and with respect thereto the Carrier asserts it did not make the change in the assignment involved in this dispute unilaterally. As shown in Carrier's letter of March 6, 1952, above quoted, the Organization was advised some two months in advance of the Carrier's intention to change the straight-away Provo-Eureka assignment to a daily turn-around Provo-Eureka assignment. Such action on the part of the Carrier was not done without notice to the Employees. However, in this regard there is nothing in Article 64 which prohibits the Carrier from establishing a new run or a new assignment without giving the Employees advance notice. With respect to violation of Article 13—Moratorium, National Settlement of May 25, 1951, the Carrier holds—as it previously stated—Article 13 of the National Settlement of May 25, 1951 has no application to or bearing on the case at issue. The so-called Moratorium did not freeze assignments or prohibit new assignments.

Regarding awards 2331, 2604, 2606, 2607, 9487 and 9488 of your Board, the Carrier holds these Awards have no bearing on the claim at issue. Award 2331 covers claim of assigned crew account used off their assignment on December 10 and December 31, 1931. Awards 2604 and 2606 cover claims for Sundays not worked when two tabulated assignments—one on a six-day basis and the other on a seven-day basis—were combined and worked six days per week. Award 2607 covers claim for time account combining a turn-around road freight assignment with a tabulated assignment June 16, 1932, without

negotiations. At that time present article 64 of the Trainmen's Agreement was not in existence. Award 9487 covers claim for time July 29, 1941 for an assigned crew account used for side trip on branch as needed instead of being used on the branch on specified days of the week. Award 9488 covers claim for time November and December 1941 and January and February 1942 for an assigned crew account used off their assigned run on days not covered by agreement.

None of the above mentioned Awards have any bearing on the claim at hand. At the time the disputes—covered by the above awards—arose, present Article 64 which gives Carrier the right to establish new runs or new assignments was not in existence. In addition, in the instant case two different tabulated assignments were not combined, nor was the crew used off its assigned territory.

Regarding Award 9366 the Carrier holds Circulars 62 and 102 meet squarely the provisions of Article 64.

With respect to statement of Employes regarding Circulars 62 and 102 not being specific in their intent, the Carrier wonders how the Employes can make such a statement when they previously stated—page 9 of their submission—no copy of Circular No. 62 was available to them.

Circulars 62 and 102 both specifically and definitely provide the territory to be covered each day—Provo to Springville on the main line—Eureka on the Tintic Branch, including, Goshen Valley Branch. In addition these Circulars provide for the number of trips to be made—daily except Sunday—out of Provo each week; the home and Sunday layover terminal, etc. In addition they provide for the starting time of the crew. Again the Carrier asserts these Circulars meet the provisions of Article 64.

In conclusion the Carrier asserts it was justified under the provisions of Article 64 in changing the Provo-Eureka straight-away assignment to a turn-around Provo-Eureka assignment.

The first sentence of Article 64, which for ready reference reads:

“The Company is not prohibited by any Article or provision of this Agreement from establishing new runs or new assignments.”

means just what it says. The language contained therein can mean nothing else other than the Company is not prohibited by any Article or provisions of the Agreement from establishing new runs or new assignments.

The claim is unwarranted and unjustified and the Carrier has shown that under the provisions of Article 64 it should be denied.

All data submitted in support of Carrier's position have been presented to the Employes and made a part of the particular question in dispute. The Carrier reserves the right to answer all data not previously furnished by the employes.

Oral hearing is desired.

**EMPLOYES' REPLY TO CARRIER'S ANSWER:** Regardless of the Carrier's contention, nothing in Article 64 can be interpreted to mean that the

Carrier can rearrange old assignments, which it did in the instant case. The Carrier attempted to have such a clause written into the rule and failed.

The Carrier further contends that the rearrangement of this run is not a change of working conditions and in violation of the Moratorium. We cannot subscribe to such a theory. When an away-from-home terminal (Eureka) has been abolished, straight-away trips changed to turn-around and the crews required to make a round trip in one day when it formerly required two days, which doubles the daily mileage run, then certainly it is a change in working conditions and necessarily a violation of the Moratorium. The Moratorium was included in the National Settlements upon the insistence of the Carriers' Conference Committees and not by the employes' representatives, who opposed. Yet, since it became effective the instant Carrier has repeatedly violated it. We insist that the Carrier is unethical and unfair and should be required to observe the provisions of a rule of its own choosing.

Moreover, the bulletin changing the assignment was not specific in its provisions as to when the crew would be required to operate on the Goshen Valley Branch. Furthermore, this crew is not run into Eureka each day but on some days operates only to Keigley, approximately half way between Provo and Eureka. Thus, the bulletin is not definite as to territory to be covered each day or terminals as stated in Award No. 9366.

In conclusion the employes contend that:

1. Under the provisions of Article 64 the Carrier does not have the right to rearrange runs without negotiation;
2. That it is in violation of the Moratorium; and
3. That in bulletining the assignment it has not conformed to Award No. 9366.

(Exhibits not reproduced. Page references relate to original documents.)

**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 held.

In a letter dated March 6, 1952, the carrier notified the petitioners' organization that, "Carrier intends to cancel present straight-away assignment and inaugurate a new turnaround freight assignment."

The assignment to be cancelled was the "Provo-Eureka" run, written into the agreement between the parties as a tabulated assignment under Article 5 (c)—Mixed and Miscellaneous Service. The organization protested, but carrier bulletined and installed a new assignment, and cancelled the old one.

Prior to the agreement of May 1, 1945, Article 64 of the said agreement between the parties provided: "In establishing new runs the proper general officer will notify the General Chairman of the Brotherhood of Railroad Trainmen and negotiate rates and conditions to cover the service. This rule not to prevent the railroad taking care of the demands of the service."

In a series of early awards, virtually all rendered without the assistance of a Referee, this Division ruled that this carrier had yielded the right in its agreement to inaugurate new runs or cancel old ones without notice to and negotiation with the employes. (Awards 15, 16, 17, 18, 19, 2310, 2311, 2312, 2352, 2600, 2603, and 2604.)

A significant change was made May 1, 1945, so that the Article now provides: "The Company is not prohibited by any Article or provision of this Agreement from establishing new runs, or new assignments." Thus it is clear that the carrier had the authority to establish the new run herein.

However, in negotiating for a change in the said Article, the carrier on December 8, 1943, proposed also that language be included as follows: ". . . or from discontinuing or rearranging old assignments." This was not incorporated in the revised Article, which in this respect remains unchanged.

The Division often has stated that to ask for a rule change is one of the best ways to indicate in the party's own estimation that it is needed to supply the authority to do what the proposed language covers. See Awards 12848, 13528, 15536, 15684, 16302. Also the Division has held that mere notice to the other party does not by itself constitute negotiation. Award 14175.

Numerous past awards of the Division are cited on behalf of carrier wherein it has been held that in the absence of a restrictive rule, a carrier has the right to discontinue and abolish established assignments unilaterally. However, these do not relate to this particular rule, this carrier, the evolution of this clause and the history of its negotiation, or to so-called tabulated runs written right into the contract between the parties.

On the other hand, in Award 9511, the Division, without aid of a Referee, sustained a claim involving the employes rights under a tabulated service on this carrier, and the statement made in Award 2604, with Referee Arthur Millard assisting, that "According to the rules of the existing Agreement the carrier was not justified in changing or abolishing assignment of crew without negotiation and agreement with the employes.", is typical of statements giving the underlying reasoning in support of numerous other awards rendered with respect to this carrier, including Awards 2310, 2311, 2312, 2313, 2352, 2600, 2606, 2607, 2609, and 14175. Accordingly, these claims must be sustained.

**AWARD:** Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FIRST DIVISION

ATTEST: J. M. MacLeod  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1959.