

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

**Award No. 25167
Docket No. 44893
00-1-99-1-U-2118**

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former Missouri Pacific-
(Upper Lines)

STATEMENT OF CLAIM:

“Were the claims settled by the parties at the December 8-12, 1997 claims conference properly paid by the Carrier pursuant to Mr. Paul Waldmann’s letter of October 2, 1998? If not, what is the remedy for payment of the above-cited settled claims and all other claims subsequent to that date?”

FINDINGS:

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

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

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

Parties to said dispute were given due notice of hearing thereon.

On October 16, 1996, the Organization filed numerous claims for a day’s pay account an engineer being required to operate his engines backward. On December 9, 1997, the Carrier agreed to settle the claims by paying one day’s pay for each violation as a penalty.

The Carrier allowed the claims on the basis of the 1985 rate of pay claiming the payments were duplicate payments. The Organization challenged the amount of payment, claiming these were penalty payments. Therefore, the claims should be paid at the current rates.

The BLE 1986 National Agreement in Section 5 of Article IV reads:

“Section 5 - Duplicate Time Payments

- (a) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, shall not apply to employees whose seniority in engine or train service is established on or after November 1, 1985.
- (b) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, not eliminated by this Agreement shall not be subject to general, cost-of-living or other forms of wage increases.”

Numerous awards have held that penalty payments are not subject to the wage freeze. In Award 6 of Public Law Board No. 5994 the three neutrals held:

“In regard to who is entitled to a penalty payment, we find Section 7 of Article X to mandate that the ‘members’ of the train crew be allowed such penalty in addition to all other earnings. Further, contrary to Carrier arguments the Board does not find the nature of this penalty to be a ‘duplicate time payment’ as set forth and described in Article IV, Section 5 of the October 31, 1985 National Agreement.”

There is no question that the Carrier had violated the Schedule Agreement and agreed to pay the claims. In fact, all the correspondence indicates the payments were penalty payments. All penalty claims should be paid at the appropriate current rate at the time the violations occur.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division**

Dated at Chicago, Illinois, this 27th day of October, 2000.