

PUBLIC LAW BOARD 6390

In the Matter of the Arbitration Between:
BURLINGTON NORTHERN SANTA FE
RAILWAY COMPANY

and

NMB Case No. 17
Claim of M. W. Stevens

THE UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim of Conductor M. W. Stevens, assigned to the Ft. Madison/Kansas City Chain Gang Pool Turn 3336, for basic day penalty allowance account required to protect service in the Kansas City/Galesburg Pool on September 8, 1997.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant(s) employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on July 14, 2001 at Washington, D.C. Claimant was not present at the hearing. The Board makes the following additional findings:

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Trainman and Yardman crafts.

Claimant was regularly assigned to pool turn service between Fort Madison, Iowa and Kansas City, Missouri. On September 8, 1997, Claimant was called in proper order at Kansas City for Train H HOUGAL1 06A to Fort Madison. Claimant subsequently submitted the following penalty time claim in connection with his service on that date:

Claim basic day mishandling account I'm assigned to [Fort Madison] to [Kansas City] chain gang turn 3336 and protected service in KC to Galesburg pool on KC to Gales[burg] train H HOUGAL1 06A.090897 at 1045 hrs, Eng[ine] BN 7915. This is violation of the Galesburg Implementation (sic) Agreement Side Letter No. 1: trading trains between pools will not be permitted. Per conversation with crew plannar(sic) John Hartley, he stated that this was a Gales[burg] train and should have Gales[burg] crew but they had run Gales[burg] train out of Wellington and used his only rested Gales[burg] crew that stood for H HOUGAL1 06A. I was relieved at [Fort

Madison] by Gales[burg] conductor D Wood who took to Gales[burg]. (Carrier Exhibit 3, emphasis added)

The Parties inform the Board that Implementing Agreement No. 2 to which Claimant refers, established terms and conditions applicable to pool service at various locations on the combined Burlington Northern and Santa Fe properties. Pertinent to this case, Implementing Agreement No. 2 established two somewhat parallel pool turns with Kansas City as the designated away-from-home terminal; one operating north to Galesburg, Illinois, and the other operating north to Fort Madison, Iowa. Article I, Section 1 and applicable Side Letter No. 1 thereof (Organization Exhibit 2) state:

Article 1 - Fort Madison / Kansas City Service

Section 1 - Routes and Mileage

Santa Fe crew[s] headquartered at Fort Madison will operate between Fort Madison and Kansas City using either Santa Fe's route or BN's route (via Bucklin). Crews operating in this service will be paid the following miles based on the route they use:

<u>Route</u>	<u>Westbound</u>	<u>Eastbound</u>
Santa Fe	223	223
Burlington Northern	223	223

Crews can use either the Santa Fe route or the BN route (via Brookfield and Bucklin) when operating between Fort Madison and Kansas City.

Article I - Kansas City / Galesburg Service

Section 1 - Routes, Mileage, and Pools

A pool of Santa Fe crews headquartered at Galesburg will be established and will operate between Kansas City and Galesburg using either Santa Fe's route or BN's route (via Brookfield and Bucklin). Crews operating in this service will be paid the following miles bases on the route they use:

<u>Route</u>	<u>Westbound</u>	<u>Eastbound</u>
Santa Fe	281	281
Burlington Northern	280	280

Crews can use either the Santa Fe route or the BN route (via Brookfield and Bucklin) on their return trip to their home terminal regardless of the route used on the trip to the away from home terminal or the location where the crew was lodged.

Side Letter No. 1

- 4) Trading trains between pools will not be permissible

The Organization progressed the instant claim on the basis that Claimant, a Fort Madison conductor, was improperly called at Kansas City for a train terminating in Galesburg.¹ Carrier denied the claim, arguing that Train H HOUGAL1 operated out of Kansas City to Fort Madison on the date of claim, and Claimant, the first out rested Fort Madison conductor, was properly called for that assignment. As the matter could not be resolved on the property, it was submitted to the Board for disposition.²

POSITIONS OF THE PARTIES: Before the Board, the Organization suggests that Carrier called Claimant for Train H HOUGAL1 on September 8, 1997 solely to avoid having to deadhead the first-out Kansas City/Galesburg Pool Conductor from Galesburg, as the Organization alleges is required by the controlling Agreement. The Organization cites Side Letter 4 to the applicable Implementing Agreement, arguing that Carrier was contractually obligated to exhaust the Galesburg extra board before the conductor vacancy on that assignment could be filled by any other means.³ Side Letter 4 states in pertinent part:

A Santa Fe combination extra board will be established at Galesburg to protect Santa Fe vacancies in the Galesburg/Chicago pool and to supplement the

¹The Carrier identified Claimant's train as "H HOUGAL1" because it originated in Houston (HOU) and terminated in Galesburg (GAL).

²The Organization does not contend that Claimant, a Fort Madison pool conductor, was required to take Train H HOUGAL1 to Galesburg. The parties stipulate, instead, that he operated into his home terminal, where he was subsequently relieved by the Galesburg conductor who ultimately delivered Train H HOUGAL1 to its designated final terminal.

³The Organization asserts that the Galesburg conductor's extra board was not exhausted when Claimant was called for Train H HOUGAL on September 8, 1997, although the record does not contain evidence substantiating that allegation.

Galesburg/Kansas City pool only if it is exhausted. This pool will only protect Santa Fe Galesburg pool turns and hours of service law relief as specified in this agreement. Trainmen on this extra board will be paid under the terms of Article III, Section (b) of the Agreement dated December 3, 1990 between Santa Fe and the United Transportation Union. If this extra board is exhausted, vacancies normally protected by it will be protected by the Ft. Madison - East combination extra board.

On that basis, the Organization alleges that because Train H HOUGAL1 is routinely designated by line-up and train symbol to operate between Houston and Galesburg through Kansas City, Carrier is committed to using exclusively Galesburg pool (or extra) crews for all legs between Kansas City and Galesburg, *regardless of their route*. In support, the Organization cites a memorandum issued by Carrier's Eastern Chief Train dispatcher on February 5, 1999 which states (Organization Exhibit 5):

All concerned:

The following trains are in the Galesburg Pool Agreement and will be manned with Galesburg Pool Crews Exclusively:

.....

H HOUGAL

The Organization further points out that on September 8, 1987, Carrier called a Galesburg engineer for Claimant's assignment, even though Train H HOUGAL1 operated from Kansas City to Fort Madison on that date. According to the Organization, Carrier, in so doing, effectively recognized Train H HOUGAL as a "Galesburg train" (which under the applicable agreement should therefore have been manned by a Galesburg conductor). The Organization argues, then, that Carrier deliberately circumvented the intent and meaning of both the Fort Madison and the Galesburg Pool Agreements by running Train H HOUGAL into Fort Madison in order to avoid the expense of deadheading a Galesburg conductor to Kansas City. The Organization urges that the instant claim be denied in its entirety.

The Carrier argues that Claimant was employed in unassigned pool service between Kansas City and Fort Madison, and that he was called in proper order for a train operating in that corridor. Thus, it asserts, there was no violation of its obligations.

Carrier contends that "trading trains", to which Conductor Stevens made reference in his initial claim, was never intended to apply to train designation, but rather to crews improperly required to switch trains on parallel assignments once en route. As support, Carrier cites Award 6 of PLB 6171, wherein that Board (Referee Fletcher, Neutral Member) addressed the matter of "trading trains" as that issue is defined on this property.

Carrier asserts that the controlling Agreement was not violated, and asks that the claim be denied.

DISCUSSION AND ANALYSIS: On the basis of review of the entire record, the Board is convinced that Carrier did not violate either express or implied conditions stipulated in Implementing Agreement No. 2. Even though Claimant is alleged to have been informed by Carrier's crew planner that Train H HOUGAL was a "Galesburg train" and "should have [had] a Galesburg crew"(see time claim, Organization Exhibit 1), the record is clear that Train H HOUGAL, which did, in point of fact, originate in Houston and terminate in Galesburg, was routed through Kansas City to Fort Madison. In actuality, then (according to clear direction supplied by Article I, Section 1 cited above), Carrier was *obligated* to call the rested first-out Fort Madison conductor at Kansas City in order to avoid violating the Agreement. (In contrast, the Board notes that had Claimant been directed to proceed to Galesburg - which he was not a violation of the Agreement would have occurred.)

On principle, the Board recognizes and gives due consideration to Chief Dispatcher Lackey's memo of February 5, 1999 (which it also notes *post-dates* this claim by nearly two years), but is compelled to point out that Carrier's operating practices are not synonymous with binding contract language. Carrier's selected method of train designation, whether common to the industry at large or singular in nature, is administrative in function. To the extent of any inconsistency, the applicable agreement would govern. To find otherwise would severely limit Carrier's ability to conduct business (that of moving freight from one place to another) as needs of service and changing conditions dictate, and the Board has no authority to impinge upon that privilege unless a genuine violation the controlling collective bargaining agreement is demonstrated. In this case, it is not. Claimant was called to perform the precise service to which he was assigned under controlling Article I, Section 1 of Implementing Agreement No. 2. The claim must be, and is, denied.

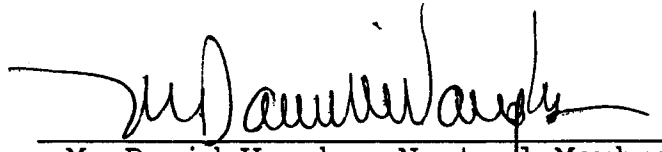
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AWARD: The Organization's claim is denied.

Dated this 10th day of November, 2001.



M. David Vaughn, Neutral Member

Gene L. Shire, Carrier Member

Rick Marceau, Employee Member