PUBLIC LAW BOARD 6721

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

and

THE UNITED TRANSPORTATION UNION

NMB Case No. 7
Claim of E. A. Landeros
Payment for a Yard Runaround

STATEMENT OF CLAIM: Claim on behalf of Conductor E. A. Landeros for payment of a yard runaround at Los Angeles on April 17, 2002.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant employee 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 2, 2004, 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.

On April 17, 2002, at 2030, Claimant was called on duty to operate Train SLBPCWS1 16A from Long Beach (Watson) to Barstow and departed at 0035 (on April 18, 2002). Conductor T. A. Klatt was called on duty on April 17, 2002, at 2100, to operate Train Q LACAUG1 17A from Hobart (Los Angeles) to Barstow and departed at 2230.[1]

Article 10, Section (g)(3), of the Agreement states, in pertinent parts, as follows:

> An employee in pool freight and unassigned service or an extra employee called but not run in turn when called for the same service for the same objective terminal and over the same route, will be allowed one-half basic day at the rate applicable to the service for which should have been called if less than four hours elapse between the time of departure from the terminal of his train and the time of departure of the train on which he should have been used . . .
>
> When the service for which called does not operate to the same objective terminal and over the same route,

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[1]Claimant's original submission (Org. Ex. 1; Car. Ex. 1), dated April 19, 2002, claimed a second runaround involving another train and crew, which is not at issue herein.

> the time of call will govern and no penalty will accrue when he does not depart from terminal in turn.

Prior to 2002 there were switching limits at Los Angeles that were confined essentially to the Hobart terminal. The territory between Los Angeles (Hobart) that ran through Redondo Junction to Watson and the Ports was road territory. In December 2001 the Carrier sought to extend the switching limits at Los Angeles, and by Public Law Board 6492, Award No. 1, April 4, 2002 (O'Brien, Arb.) (Car. Ex. 4; Org. Ex. 4), the Los Angeles (Hobart) switching limits were extended to include Watson, the Ports and Pier 400. Subsequent to Award No. 1, the Parties negotiated an Implementing Agreement that extended the Hobart switching limits, and agreed to Side Letter 1, which states as follows:

> The parties agree to meet expeditiously upon notification that the agreement has ratified to determine district miles and route codes to the various locations within the expanded terminal. [been? sic?] [Car. Ex. 4; Org. Ex. 4]

Pursuant to Side Letter 1, five separate route codes were developed for the expanded Los Angeles Terminal. Code 01, paying 149 miles, governs crews operating between Hobart and Barstow; Code 02, paying 165 miles, governs crews operating between Watson and Barstow.

Claimant filed a claim for a yard runaround. The Carrier declined the claim as without basis; the Organization appealed the denial and, as the claim was not resolved on the property, it was presented to this Board for resolution.

POSITIONS OF THE PARTIES: The Organization argues that the Carrier violated Article 10(g)(3) of the National Agreement, which clearly states that a train must depart the *terminal* to cause a runaround and that departure of the terminal does not occur until yard service ends and road service begins at M.P. 148+1213.2'. It asserts that the *terminal* at the west end of this route is Los Angeles (including Hobart, Watson, the Ports and Pier 400) and that no other point in the expanded yard can be considered a departure. It contends that, as demonstrated by PLB 6492, Case No. 1, the Carrier did not request or receive the right or ability to change the switching limits for the eastern exit of the Los Angeles Terminal. It maintains that the monetary compensation received by crews are terminal miles for operating in the expanded terminal and affect the overtime rule only, but do not affect the runaround rule in any manner.

The Organization further argues, citing authority, that, contrary to the Carrier's contention, the train must depart the

terminal before a yard runaround is not possible. It contends that, where trains had started to depart the yard but were unsuccessful, the Organization's claims filed to protest runarounds of awards were sustained. It maintains that, until the train departs the terminal yard, runarounds must be allowed.

The Organization argues that the Carrier's action violated the Agreement and requires that the claim be sustained.

The Carrier argues that the claim is without basis because the language of Article 10(g)(3) of the governing National Agreement requires that three distinct criteria be satisfied in order for the runaround rule to become effective, but that in the instant situation only one was met. It contends that the crews must be in the same service, the crews must have the same objective terminal, and the objective terminal must be reached by traversing the same route. The Carrier maintains that, when any of the three elements is missing, the language of the rule is inapplicable. It asserts that, in the instant case, Claimant was not in the same service and was not traversing the same route as those he claims ran around him. It argues that Claimant's service was between Watson and Barstow, while the service of those he claims ran around him was between Hobart and Barstow. Similarly, it contends that they did not traverse the same route, since Claimant traversed a route which paid him 165 miles, while the other crews traversed a route which paid them 149 miles.

The Carrier further argues that, prior to April 2002, there were switching limits at Los Angeles that were confined essentially to the Hobart terminal and that the territory from Hobart and running through Redondo Junction to Watson/Ports/Pier was considered road territory with single track and low speed limits. It contends that one of its primary reasons for extending the Hobart switching limits was to permit pool freight crews to operate between Watson/Ports/Pier within the allowable hours of service.

The Carrier, in addition, argues that the Organization's contention that all locations within the expanded Los Angeles Terminal are the same location for purposes of the Runaround Rule is without merit. It contends that crews operating between Watson/Ports/Pier and Barstow are not operating the same route as crews operating between Hobart and Barstow because the routes are compensated differently and because the Organization argued against the idea of more than one on/off duty location within the expanded Los Angeles terminal during the negotiations of the Hobart switching limit extension. With regard to the former, the Carrier notes that, pursuant to the commitment made by Side Letter 1, five separate route codes were developed by the Parties for the expanded

Los Angeles Terminal, including Code 01, paying 149 miles, governing crews operating between Hobart and Barstow, and Code 02, paying 165 miles, governing crews operating between Watson and Barstow. With regard to the latter, the Carrier maintains that, as the Organization had desired, there are multiple on and off duty points at different locations within the Los Angeles Terminal and that, therefore, there are different routes between these different locations and other terminals, such as Barstow. It asserts that trains traversing the route between Pier 400 and Barstow are operating on different track, and are operating a different route, than trains traversing the route between Hobart and Barstow.

Finally, the Carrier argues that the Organization has failed to carry the requisite burden of proof and has failed to identify any rule or provision specifically supporting its position.

The Carrier urges that the claim be denied as without merit.

DISCUSSION AND ANALYSIS: Upon the whole of the record and in consideration of the arguments of the Parties, the Board is persuaded by the Carrier that Claimant was not called for the same service over the same route and concludes for that reason that there was no runaround in violation of the rule and that the case should be denied. The Award so reflects.

It is undisputed that the Claimant was assigned to operate from Watson, within the Los Angeles Terminal, to Barstow, while the train which Claimant argues ran around him operated from Hobart, also within the Los Angeles Terminal, to Barstow. Article 10, Section (g)(3) provides for a runaround when an employee is called but not run in turn when "called for the same service for the same objective terminal and over the same route" if time elapses "between the time of departure from the terminal" The dispute is whether the two trains were operated "for the same service" and "over the same route." The Board is persuaded that they were not. The Organization also argues that the train must "depart the terminal" before a yard runaround is *not* possible. The Board does not reach a conclusion on this issue for the reasons set forth below.

The Los Angeles Terminal includes all the starting points in dispute. M.P. 148+1213.2' is the eastern end of the expanded Los Angeles Terminal, and the Organization contends that this is the point at which a train "departs" the expanded terminal. However, contrary to the Organization's contention, the "same service" and the "same route" do *not* begin at that point. The "service" begins where the train service begins (*e.g.*, Hobart, Watson, Pier 400, etc.); and the "route" is, for example, from Hobart to Barstow,

from Pier 400 to Barstow, etc., not from the point where "yard service" ends and "road service" begins.

While it may be true, as the Organization contends, that the train must depart the terminal - which may or may not be an expanded terminal - to cause a runaround, and that a train does not *depart* the Los Angeles Terminal until it passes M.P. 148+1213.2', this does not negate the requirement that the employee be called for "the same service for the same objective terminal and over the same route." The "same service" is not defined and it is not reasonable to *assume*, as the Organization does, that "service" is initiated only at the point the train "departs the terminal." The end point of the terminal does not necessarily determine where the train service begins or what the route is. The route is not designated as Los Angeles Terminal to Barstow; it is designated as Hobart to Barstow, Watson to Barstow, etc. That is why, pursuant to Side Letter 1, the Parties established five different route codes paying for three different distances *within the expanded Los Angeles Terminal*.

Since the two trains at issue were not in the same service and route, no runaround occurred within the meaning of the Rule. The Claim must, therefore, be denied. The Award so reflects.

AWARD: The Organization failed to meet its burden of proof. The claim is denied.

Dated this 3rd day of February, 2006.

M. David Vaughn
Neutral Member

Gene L. Shire
Carrier Member

R. L. Marceau - dissenting in part
R. L. Marceau
Employee Member