PUBLIC LAW BOARD NO. 1981

Award No. 498
Case No. 498

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

And

Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM:

Claim of Phoenix District Engineer G. L. Seaton, for 100 miles at the overtime rate for service performed on his birthday (holiday) of May 18, 1973.

FINDINGS:

Claimant, at the time of the dispute in question, was assigned to the extra List at Phoenix, Arizona. on May 18, 1973, Claimant was called to fill a vacancy on Local Freight Run No. 426. For service performed on May 18, 1973, Claimant was allowed 100 miles, 3 hours and 55 minutes overtime, and a 50-mile Hours of Service deadhead. In addition, Claimant was allowed one basic day's pay as holiday pay on account of performing service on his birthday. The Organization filed Claim on behalf of Claimant seeking 100 miles at the overtime rate for service performed on May 18, 1973. The Carrier denied the Claim for the overtime rate for service performed on the date in question.

The issue to be decided in this dispute is whether Claimant is entitled to holiday pay at overtime rate for performing service on the date in question.

The position of the Carrier is that Claimant is not entitled to holiday pay for service performed because the service performed was on an assignment not confined to 100 miles or less. The Carrier alleges that although Claimant was paid holiday pay for that date, such payment was improperly authorized at the local level and not discovered until it was too late to contest such payment. The Carrier further alleges that the issue at hand has already been resolved in its favor by Decision 896 of S.A.B. No. 180.

The Carrier contends that Claimant is not entitled to holiday pay for the date in question because his service performed was not on an "eligible assignment". In support of its position, he Carrier cites the 1964 Agreement. The Carrier contends that Section 2(a) of the Agreement prescribed specific "eligible assignments" for regularly assigned engineers. Section 2(a) states,

> Each regularly assigned engineer, fireman, hostler and hostler helper represented by an organization party hereto in yard service, and each regularly assigned road service employe in local freight service, including road switchers, roustabout runs, mine runs, or other miscellaneous service employees, who are confined to runs of 100 miles or less and who are therefore paid on a daily basis without mileage component, and who meet the qualifications set forth in paragraph (c) hereof ..."

The Carrier contends that this section only covered regularly assigned engineers and that extra engineers were only eligible

under this section if confined to "yard assignments". The Carrier further contends that Section 2(a) requirement that "runs confined to 100 miles or less" applies only to local freight runs since Yard assignments are "eligible" by definition.

The Carrier maintains that the 1969 Agreement extending coverage under holiday rules to extra engineers mandated requirements for eligibility. The Carrier alleges that the intent of the 1969 Agreement was to bring extra engineers within the purview of the 1964 Agreement. The Carrier further alleges that the 1969 Agreement did not modify the 1964 Agreement and required that the service in question be confined to 100 miles or less in order to qualify for holiday pay. The Carrier maintains that since Claimant's run on the date in question would not qualify as an "eligible" assignment for a regularly assigned engineer, it is illogical that it would qualify as "eligible" for an extra engineer filling a vacancy on that position.

The position of the Organization is that Claimant is fully entitled to the basic day's pay as holiday pay for service performed on the date in question. The Organization maintains that since Carrier has already allowed Claimant the basic day's pay, it is irrational for it not to allow the Claim at the overtime rate.

The Organization maintains that it is irrelevant whether Claimant's assignment was either more or less than 100 miles. The Organization contends that there is no restriction contained in the National Paid Holiday Agreement regarding actual mileage of an assignment. In support of its position, the Organization

cites Section 1, Article 23 of the Agreement. The Organization contends that nowhere in this section does it indicate that extra engineers will be denied holiday pay if their assignment exceeds 100 miles. The Organization admits that Section 1 does place such restrictions on regularly assigned engineers, but asserts that this subsection has no bearing on extra engineers.

The Organization concludes that Carrier has failed to demonstrate that the Agreement restricts holiday payment to extra engineers under the circumstances of this Claim, and that therefore Claimant is entitled to both the holiday pay and overtime rate.

A review of the applicable contract provisions compels the conclusion that the Organization's Claim must be sustained.

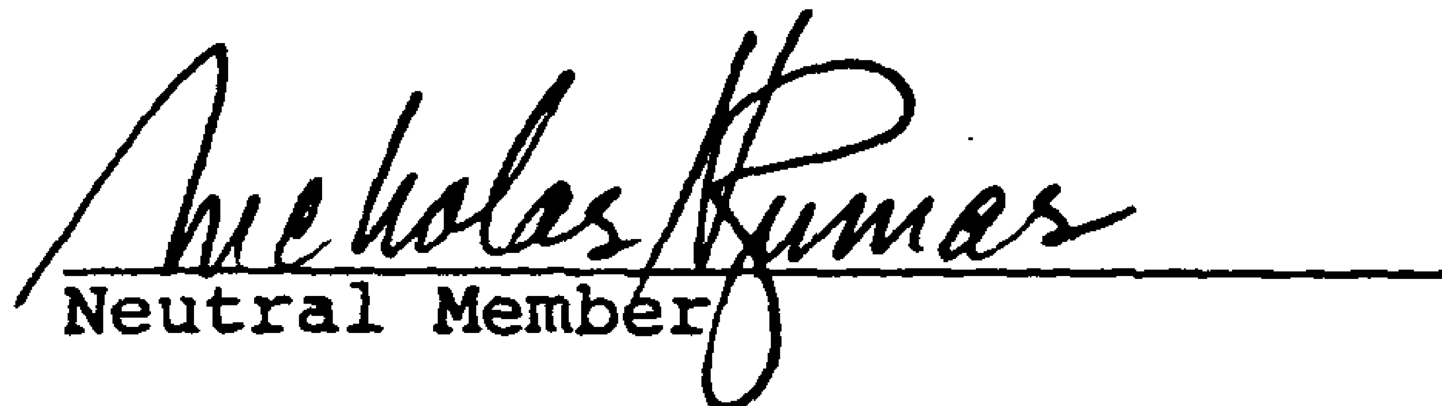
The Organization has established that no restriction exists in the 1969 Agreement such as that alleged by Carrier. The "Paid Holidays" provision covers both regularly assigned engineers and extra engineers. Section 2 of the Holiday provision sets out specific requirements in order for an extra engineer to receive an additional day's pay. We find that none of those provisions requires that the run in question be 100 miles or less. Section 1, dealing with regularly assigned engineers, specifically mandates that only those assignments "confined to runs of 100 miles or less ..." may be compensated. If the parties had intended to make this requirement applicable to extra engineers, language indicating such intent should have been included in Section 2. We do not agree with Carrier that the 1964 Agreement indicates such intent. The 1964 Agreement, as noted by Carrier, did not include extra engineers in its coverage. The 1969 Agreement specifically includes extra engineers, and we find it controlling for the

purposes of this Claim. We will not go beyond the language contained in the Agreement, and therefore must find that no restriction exists limiting compensation to those cases where an extra engineer's run is 100 miles or less.

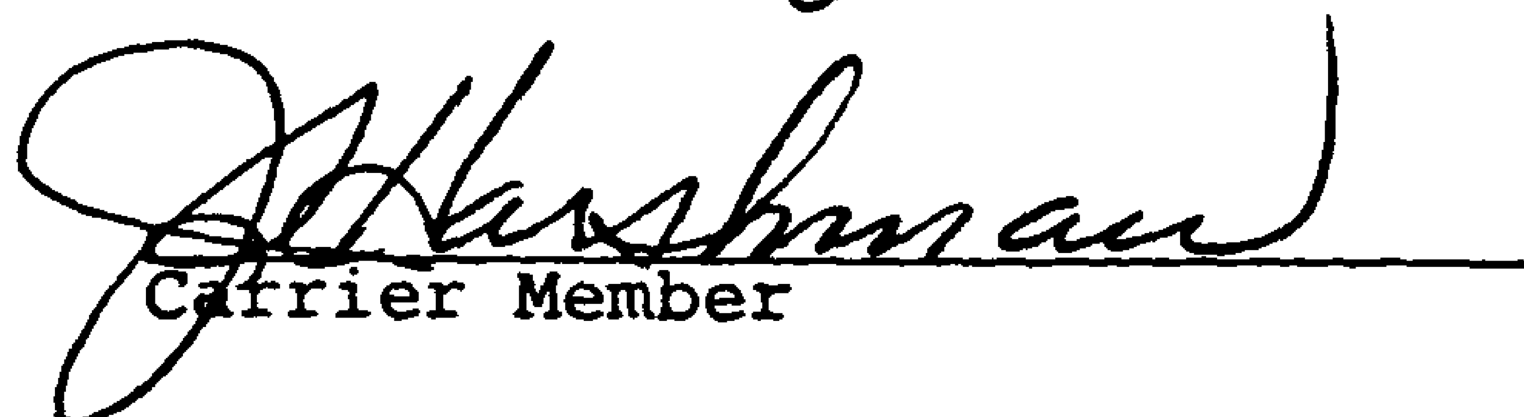
Finally, we find those awards cited by Carrier inapplicable to this Claim. Decision No. 896 of S.A.B. No. 180 involved a situation where the employee did not perform a sufficient amount of service immediately preceding his holiday service. That situation is not present in the case at hand. None of the awards cited by Carrier addresses the issue of the 100 mile requirement, and we therefore find those awards irrelevant.

AWARD:

Claim sustained.



Neutral Member



Carrier Member

Organization Member

Date: 9-6-85