

SPECIAL BOARD OF ADJUSTMENT NO. 642

AWARD NO. 199

CASE NO. 253

PARTIES) UNITED TRANSPORTATION UNION-T&C
)
 TO) and
)
 DISPUTE) MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT
OF CLAIM:

Claim of Conductor J. R. Morris for 150 miles for holiday pay, November 27, 1969. Claim of Brakeman E. R. Townsend for 150 miles for holiday pay, November 27, 1969.

FINDINGS:

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

These claims are grounded on the premise that crews in pool freight service assigned to runs of less than 100 miles and compensated on a daily basis without a mileage component are entitled to holiday pay under the provisions of Section 2 of Article I of the June 25, 1964 National Agreement.

The said provisions read, in pertinent part, as follows:

The following provisions shall apply to regularly assigned engineers, firemen, hostlers, and hostler helpers represented by an organization party hereto in yard service and regularly assigned road service employees paid on a daily basis:

(a) Each regularly assigned engineer, fireman, hostler, and hostler helper represented by an organization party hereto in yard service, and each regularly assigned road service employee 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 paid on a daily basis without a mileage component, and who meet the qualifications set forth in paragraph (c) hereof, shall receive one basic day's pay at the rate for the


class and craft of service in which last
engaged for each of the following enumerated
holidays

This issue has been the subject of continuing controversy resulting in a plethora of arbitral decisions for more than a decade. While some of the decisions are in sharp conflict, it appears the current and prevailing majority hold that eligibility to receive holiday pay is restricted to those employees in road service who are (a) regularly assigned and (b) engaged in those kinds of service specifically set out in paragraph (a) of Section 2. The rationale of these awards appears to be that the language agreed upon by the parties is "clear and unambiguous" and that, therefore, an arbitral board may not properly "add to or subtract from" the "express and controlling" terms of that language for to do so would be to rewrite (and not interpret) the agreement of the parties. (Award No. 12, P.L.B. No. 338, 1969; Award No. 2, P.L.B. No. 191, 1971; Award No. 19, P.L.B. No. 1128, 1975, are examples)


In the case at hand, it is clear that the Claimants were assigned to pool freight service working only when called on a first-in, first-out basis. They cannot, therefore, be treated as "regularly assigned" road service employees in local freight service as required by the provisions of Section 2. And in view of the current and prevailing weight of precedential authority on this issue, as heretofore observed, the Board will follow the principle of stare decisis in finding that Claimants do not qualify under the National Agreement for holiday pay.

AWARD: Claim denied.

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WILLIAM H. COBURN, Chairman


H. M. HACKER, Carrier Member


GEO. R. PERKINS, Organization Member

Dallas, Texas
January 25, 1978