

PUBLIC LAW BOARD NO. 3220

Award No. 1

Case No. 1

N&W File: FE-MU-82-2

UTU File: REE-82-C-2

Parties United Transportation Union

to and

Dispute Norfolk and Western Railway Company

Statement Claim of Engineer H. O. White on various dates in Oct. and of Claim: Nov., 1981 for difference in pay account of performing 2 classes of service.

Findings: The Board after hearing upon all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a regular assigned Engineer on the Elmore-Williamson Pool run, operating in through freight service between Elmore, West Virginia and Williamson, West Virginia (a distance of 86 miles) performed other services besides his regular assignment of through freight on various dates.

In particular, on October 25, 1981, Claimant set off at two locations and picked up at one location consuming a total of one hour and 45 minutes. Engineer White was allowed 100 miles and four hours and 30 minutes overtime at converted local rate of pay.

On October 26, 1981, Claimant picked up and switched cars at 3 points Kepler, Marianna and Simon, consuming 4 hours and 50 minutes. Engineer White was allowed 100 miles and 4 hours and fifty minutes overtime at converted local rate.

On October 27, 1981, Claimant set off empties at a mine operation at Alpine consuming 50 minutes. Engineer White was allowed 100 miles, and 3 hours and 40 minutes overtime at through freight rate.

On October 28, 1981, Claimant classified cars at a mine operation consuming 3 hours and 35 minutes. Engineer White was allowed 100 miles and 10 hours overtime at converted local rate.

On November 2, 1981 Claimant classified cars at Simon consuming 2 hours. Engineer White was allowed 100 miles, and 5 hours and 20 minutes overtime at converted local rate of pay.

On November 3, 1981, Claimant supplied empties at Kepler consuming 30 minutes. Engineer White was allowed 100 miles and 40 minutes overtime at through freight rate.

Organization advances the claim on the basis that any two classes of service performed under Article 7 are to be paid at the highest rate of service performed. Claimant seeks a pro rata rate for service performed in setting off and picking up enroute between Elmore and Williamson.

Carrier denied the claim on the basis that in the instant claim the Engineer consumed more than 1 hour and 30 minutes in the aggregate in picking up and setting off, and was converted to local freight rates and paid accordingly. Carrier states that Claimant was allowed local rates for the dates of October 25, 26, 28, and November 2, 1981.

Carrier admits that on October 26, 28 and November 2, 1981 Claimant did perform two or more classes of service at different mine operations; however, Carrier points out that on these dates the pro rata claim was not allowed because Claimant earned overtime each date which was greater than the pro rata claim. Consequently, Carrier was impelled by the

rule to pay the greater rate. Carrier points out that on October 26th Claimant advanced a claim for 4 hours and 50 minutes pro rata, however, Carrier paid Claimant 4 hours and 50 minutes overtime in addition to his 100 miles per day. On October 28th Claimant advanced the claim for 3 hours 35 minutes pro rata, but said claim was not allowed because he earned 10 hours overtime in addition to his 100 mile day. On November 2nd Claimant asserted a claim for 2 hours pro rata, which was not allowed because he earned 5 hours and 20 minutes overtime in addition to his 100 mile day.

Carrier advises that Claimant would have been paid the pro rata claim, as advanced, in addition to his 100 mile day had he not earned overtime. Carrier asserts that it was required, pursuant to the mandates of Article 7 - More Than One Class of Service, to pay Claimant the highest rate applicable to any class of service performed.

The applicable portion of Article 7, in pertinent part reads:

\*\*\*2. Road engineers in through freight and passenger service only shall receive full payment for the regular day or trip based on miles or hours applicable to the regular day or trip plus extra compensation on a minute basis for all additional time required in the other class of road service.

The rate paid both for the regular trip and for the additional time shall be the highest rate applicable to any class of service performed during the entire day or trip."

Organization, in support of the claim, relies upon a reply to a request for clarification by the Brotherhood of Locomotive Engineers, General Chairman S. I. Smith, under date of January 12, 1981, who wrote, in pertinent part:

"...Relative to your questions and the new schedule agreement for engineers, please be advised that: Virginian Supplement 27 was left off in order to provide Virginian engineers the cover of "New" Article

7. You may note that Article 7 provides payment for any type service of more than one class. Therefore, it was my decision that Virginian engineers would over a period of time, profit more monetarily from the new rule than from occasionally retracking a car..."

When the facts are applied to the rule, we find no support for the instant claims as made. Nor do we find the letter from General Chairman Smith to be dispositive of the issues of this claim.

AWARD: Claim denied.

*L. P. King, Jr.* *Dissenting* *E. M. Martin*  
 L. P. King, Jr., Employee Member E. M. Martin, Carrier Member

*A. Thomas Van Wart*  
 A. Thomas Van Wart, Chairman  
 and Neutral Member

Issued at Salem, New Jersey, July 15, 1983.