General Committee of Adjustment, GO-769

AMTRAK BOARD AWARDS SYSTEM DOCKETS AND OTHER AWARDS OF INTEREST HANDBOOK

Compiled by:
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General Chairman

Updated: March 17, 2011

A Practical Guide

- **To Help Advise Members of Their Rights**
- **To Help Handle Claims with Local Labor Relations Officers**
- **To Help Formulate Cases**

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MESSAGE TO AMTRAK, MBCR, AND METROLINK LOCAL CHAIRPERSONS GENERAL COMMITTEE OF ADJUSTMENT - GO-769

The rules in the Amtrak Agreements and by extension the MBCR and Metrolink Agreements have been consistently subjected to interpretation since their inception to the point that before giving advice to a member regarding their rights concerning a particular rule, you should refer to the interpretation(s) thereto, which are contained in this booklet.

This booklet will also prove helpful when dealing with management when advising members in regard to filing claims and in the progression of such claims under Rule 24. A complete copy of a particular interpretation will be provided upon request.

The most precedent setting cases in this booklet are those by the following tribunals, because they are what we call "on-property decisions", i.e., UTU vs. Amtrak:

• Public Law Board No. 3516	Referee Louis Yagoda
• Public Law Board No. 4874	Referee Robert E. Peterson
• Public Law Board No. 5223	Referee Gil Vernon
• Public Law Board No. 5323	Referee Barry E. Simon
• Public Law Board No. 6189	Referee Gerald E. Wallin
• Public Law Board No. 6312	Referee Thomas N. Rinaldo, Esq.
• Public Law Board No. 6478	Referee Marty E. Zusman
• Public Law Board No. 6424	Referee Robert E. Peterson
• Public Law Board No. 6193	Referee Robert E. Peterson
• Tri-City Dispute	Referee Gil Vernon
• Special Board of Adjustment 5915	Referee John M. Skonier, Esq
• Public Law Board No. 6673	Referee John M. Skonier, Esq
• Public Law Board No. 5463	Referee Nicholas H. Zummas
• Public Law Board No. 3713	Referee John B. LaRocco
• Public Law Board No. 5953	Referee Peter R. Meyers
• Public Law Board No. 6140	Referee J. R. Johnson
• Public Law Board No. 4392	Referee David H. Brown
• Public Law Board No. 5117	Referee Harold Weston
• Public Law Board No. 4971	Referee Louis E. Seltzer
• Public Law Board No. 4682	Referee James E. Mason
• Public Law Board No. 5586	Referee Barry E. Simon
• Public Law Board No. 5424	Referee Robert E. Peterson

The next level of decisions contained in this booklet are the System Docket cases, which are identified by either a NEC-UTU-SD number or an OC-UTU-SD number. "NEC" stands for Northeast Corridor and "OC" stands for Off-Corridor. These are cases that were settled by this office with Amtrak's Director of Labor Relations. Should the person you are dealing with claim System Docket decisions do not establish a precedent, remind them that Amtrak is not in the habit of paying claims that have no merit. In fact, even when they do, Amtrak usually fights making payment until they are forced to do so by a tribunal having jurisdiction, such as a Public Law Board. Accordingly, irregardless of the disclaimer under which payment is made in a System Docket case, the fact payment was made is significant. Therefore, like cases, disclaimer or not, must be paid or go to a tribunal with jurisdiction.

As information, in many instances, System Docket cases are initially denied by the Director of Labor Relations and then subsequently paid only after they are within 2 or 3 weeks of a hearing by a Public Law Board. In other words, they are paid on the court house steps so to speak.

If you need assistance in formulating a case or have any questions, please do not hesitate to contact the undersigned.

The foregoing report was initially compiled by former General Chairman A. L. Suozzo. I have updated the Awards and will continue to do so in the future.

As always, I remain

Fraternally yours,

Roger M. Lenfest
General Chairman

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RULE 1 - SCOPE AND DEFINITIONS

PLB 1940 - Award No. 2 - Moving the train of another Carrier that is blocking the route. (**DENIED**) Filed in Amtrak Rule 1 On & Off-Corridor.

PLB 4874 - Award 13 - Amtrak used a BN crew to operate an Amtrak train claiming an emergency. Claim **Sustained** for 8 hours.

The Claimant filed for a days' pay on the basis that he should have been used to couple and uncouple the engines, and to also line the switches. Claim **DENIED**. 6/18/02

PLB 4874 - Award No. 27 - Handling electrical cables. Claim **DENIED**.

PLB 4874 - Award No. 34 - Claim for one days' pay **SUSTAINED**. Claimant was assigned in yard service at Oakland, CA on Job AOB-1. During his tour of duty the Claimant was directed to move a Southern Pacific freight car from Track 39 to Track 11 at the Southern Pacific Oakland Yard.

PLB 5089 - Award No. 10 - Fireman lined switches while the crew remanded on the train. Claim **SUSTAINED**. Filed in Amtrak Rule 1, Off-Corridor. *Also see Award No. 8 of PLB 5263 in Conrail Rule 1.* 6/18/02

PLB 5223 - Award No. 4 - The issue here was whether or not we are required to use a cellular phone. The Board ruled as follows:

> *"DECISION: It is the conclusion of the Board that, simply put, there is no support in the agreement for the penalty claim. Nothing in the agreement prevents the Carrier from improving existing communication methods, particularly where it doesn't represent a significant change in duties."* 11/4/94

PLB 5223 - Award No. 11 - The issue here was whether or not the Carrier could establish a conductor's position that worked a portion of each day as an Assistant Conductor. The Board ruled as followed: "The simple answer is **NO**". 11/4/94

PLB 5323 - Award No. 41 - Pilot Engineman used to Pilot the Conductor on the rear of a train making a reverse move leaving Washington, DC over Amtrak property (former Washington Terminal Co. trackage). Claim **SUSTAINED** for one (1) day's pay at the overtime rate that was filed by a regularly assigned Conductor on his rest day who should have been called to perform the service. 6/18/02

PLB 5323 - Award No. 52 - Claimant was in for rest at an away-from-home crew base, and was contacted in the middle of the night by the Crew Dispatcher, and asked for information in regard to the identity of the Engineman on Claimant's assignment. Claimant filed for one (1) days pay for doing clerical work, which was denied. The Board did rule "that Carrier give some guidance to its crew dispatchers in this regard, and take appropriate remedial action when similar occurrences arise. Carrier, in this case, avers it counseled the crew dispatcher." 12/8/94

PLB 5223 - Award No. 14 - Engine crew lining switches in advance of a train move. **DISMISSED.** 12/18/95

OC-UTU-SD-289 - A Southern Pacific crew operated an Amtrak train from Pueblo, Colorado to Dotsero, Colorado. Denver Crew Base extra list employee was paid one (1) days pay. 12/20/96

PLB 5323 - Award No. 98 - Serving meals to passengers. **SUSTAINED** for one (1) days pay on the basis the Agreement was violated by requiring a Conductor to perform service beyond that of the craft of Conductor/Assistant Conductor. Good case to refer to in regard to our Scope Rule. 12/20/96

SBA 928 - Award No. 87 - BLE claim for one (1) days pay for lining a switch in advance of a train movement. **SUSTAINED.** *Filed in Rule 1 Amtrak.* 12/20/96

PLB 5323 - Award No. 105 - Carman operated a cutting lever to cut-off a car from a train in 30th Street Station, Philadelphia. **DENIED** for one (1) day's pay filed by a trainman for an encroachment of our craft. See dissent of Labor. 12/18/97

NEC-UTU-SD-295

STATEMENT OF FACTS: On the dates in question, Amtrak used Septa employees to operate Septa equipment as an advance section of Train No. 46 between Lancaster, PA, and Philadelphia, PA.

EMPLOYEES' POSITION: Amtrak cannot contract with another Carrier to operate Amtrak service, which were the circumstances in the instant case. The work of transporting passengers on Train No. 46 was service that is reserved for Amtrak Train Service employees. On the dates in question, Amtrak decided to operate an advance section of No. 46 due to the late arrival of No. 46 at Harrisburg, PA. This was service that should have accrued to Amtrak Train Service employees at Harrisburg as claimed. **SUSTAINED** 12/18/97 ambdawds

PLB 6189 - Award No. 11 - Concerns the movement of equipment within a maintenance facility area. 6/5/00

PLB 2378 - Award No. 3-B, Case No. 3-B - Passenger Trainman instructed by Station Agent to load baggage from station platform to Greyhound bus. **SUSTAINED.** Filed in Rule 1 Amtrak On and Off Corridor. 6/5/00

PLB 6189 - Award No. 10 - Amtrak operated a diesel powered one (1) car passenger train .. called the Regio Sprinter without a Conductor. The decision relied upon Rule 11 only and, inasmuch as no revenue was collected, Rule 11(a) was not triggered, therefore a Conductor need not be assigned. See Labor's dissent. 6/5/00

PLB 5916 - Award No. 45 - Yard crew instructed to line switches for a road crew. **Denied.** *File in the CSX Awards book.*

PLB 5916 - Award No. 43 - **Sustained** for one day's pay for Conductors required to clean the cab of the engine. Filed *in the CSX Awards book.*

OC-UTU-SD -404 - Claim **sustained** for eight (8) hours when the Carrier used a Management Official to pilot an unqualified Conductor.

First Division Award No. 21090 - Duties of Passenger Trainmen - complete file is in *Rule 1, Amtrak On-Corridor.*

OC-UTU-SD **- 1521** - Mechanical forces made-up the "hospital train" at New Orleans. **Sustained** for eight (8) hours pursuant to PLB 6189, Award No. 11. 6/3/05

PLB **6312 -** ***Award No. 105*** **-** Claims for the Carrier's action in denying Conductors and Assistant Conductors the right to perform the work of selling tickets on-board unreserved trains operating over the Northeast Corridor. **Denied.** 6/23/05

PLB **6312 -** ***Award No.*** **28 -** Amtrak passengers transferred from a disabled Amtrak train to a New Jersey Transit train to complete their trip to Philadelphia. Such did not constitute a violation of our Agreement. 6/23/05

PLB **6312 -** ***Award No.*** **233 - Denied** a claim for Pilot Service performed for a foreign Carrier over Amtrak property by an Amtrak Supervisor. 1/8/07

***PLB* 6312 - *Award No. 240* - Denied** claim for administering a so-call Muzzle Test to the Engineer. 1/8/07

***PLB* 6312 - *Award No.* 216** - Movement of Equipment in a maintenance facility area by M of E employee **DENIED.** See Labor's dissent. 1/8/07

***PLB* 6312 - *Award No.* 227 - Denied** the following claim:

> Passenger Conductor E. R. Drews claiming one (1) day's pay (eight [8] hours) for the Carrier's violation of Rule 1 of the parties' Agreement on July 6, 2002, when he was made to work at San Jose bus terminal collecting tickets. 1/8/07

PLB 6312, Award No. 278 – First half of a round trip annulled. Conductor used to the turnaround point as an Assistant Conductor claimed eight (8) hours for a violation of Rule 1 on the basis Award No. 11 of Public Law Board No. 5223 applied. The claim was denied on the basis that Award No. 11 of Public Law Board No. 5223 prohibits the Carrier from establishing a regular assignment that works as a Conductor and Assistant Conductor.

PLB 6312, Award No. 279 – Carrying mail. Denied.

PLB 6312, Award No. 277 – Moving and spotting engines in engine house territory for fuel, sand, and cleaning is not a violation of Rule 1.

PLB 6312, Award 217 – Involves the Car Mover at New Orleans and the Coach Yard at New Orleans.

RULE 2 - CLASSIFICATIONS AND BASIS OF PAY

PLB 3713 - Award No. 3 - Claimant was on a regular assignment advertised to work Monday through Friday. He worked Monday, Tuesday, and Wednesday after which he was displaced. He exercised his seniority to an assignment that also worked Monday through Friday, and he worked Thursday and Friday. He then worked his rest day on Saturday, and was denied time and one half on the basis that he had started a new workweek when be exercised his seniority. **SUSTAINED** on the basis both assignments had the same workweek. *Filed in Rule 2, On-Corridor.*

NOTE: If the second assignment had a different work week, the claim would have been denied.

See Rule 2 On-Corridor for Award No. 1 of PLB 5424, which is a case that was **SUSTAINED** for two (2) separate days, plus held time, for a crew that ran from Boston to Hyannis/Laid-over 5 hours and 20 minutes, and then returned to Boston.

PLB 5223 - Award No. 10 - The issue here involved a training class at the end of a tour of duty, as to proper payment i.e. continuous time under **Rule 2** or a separate day under **Rule 20**. The Board's decision was that Rule 2 was controlling. 11/4/94

FACTS:

"On the date of claim, Claimant was regularly assigned to yard assignment AYL-1, coming on duty at Los Angeles at 6:05 am. Claimant reported for his assignment, and continued to work it until 8:05 am, at which time he was instructed to perform service as a Passenger Conductor on Train 572 from Los Angeles to San Diego and return on Train 581."

DECISION:

It appears to this Board that the Organization's claim is grounded upon its assertion that Claimant was not the appropriate employee to use for service on Trains 572 and 581 pursuant to Rule 13(b). That may well be true. The Rule sets out an order by which the Carrier is to utilize employees when there is a day-to-day vacancy for a Conductor. None of those steps includes an employee in Claimants classification.

Carrier would be privileged to reach Claimant for this vacancy only if there were no employees to be called using the procedures set forth in Rule 13(b). There is, however, no evidence that there were rested and available employees in any of the classifications set forth in the Rule. Even if there were, it would be that employee who would be the proper claimant in such a case. The Rule, the way it is written, appears to establish an employee's right to work a job rather than establish the right not to. Thus, it would be the employee who was improperly denied the opportunity to work the vacancy who would have standing to file the claim. **DISMISSED.**

NOTE: Also see Award No. 80 of PLB 5323 12/18/95

OC-UTU-SD-310 - **SUSTAINED** for held time pay beginning 12 hours after actual off duty time when deadheading to an away from home crew base, rather than the advertised arrival time when deadheading. 12/20/96

PLB 5323 - Award No. 82 - OC-UTU-SD-285 - **SUSTAINED** for the Assistant Engineer's rate of pay when used to substitute for an absent Assistant Engineer. 12/20/96

PLB 5953 – Case No. 20, Award No. 20 – *This is the same as Award No. 82 of PLB 5323,* except the Carrier erroneously claimed the person was filling a Pilot Conductor vacancy. Even though we went to great lengths to explain that there was no need for a Pilot Conductor and in fact, the Trainman was substituting for an absent Assistant Engineer, our claim was **DENIED.** 6/5/00

PLB 6312 – Award No. 2

> *STATEMENT OF CLAIM:* Assistant Passenger Conductor J. J. Kipka claiming the hourly rate of pay applicable to the second engine service employee assigned to Train No. 8 on September 18, 1998. **Sustained.**

NOTE: This decision followed the precedent established by PLB 5323, Award No. 82. 1/29/02

PLB 5223 - Award No. 23 - Because of inclement weather, Claimant set back into the next day, after which he worked to the away from home crew base, arriving past the normal reporting time for the return trip. However, the return train was annulled. Claimant held over to the next day to work the same train back to the home crew base. Claim for continuous time on the basis Claimant should have been deadheaded upon arrival at the away from home crew base was **DENIED.** 12/20/96

TRI-CITY ASSIGNMENT DISPUTE

In The Matter Of
Arbitration
Between

OPINION AND
AWARD

National Railroad Passenger Corporation (Tri-City Dispute) (AMTRAK)

and

United Transportation Union *Gil Vernon, Arbitrator*

Appearances

On Behalf of the Carrier. L. C. Hriczak, Director of Labor Relations - National Railroad Passenger Corporation.

On Behalf of the Union: A. L. Suozzo, General Chairman - United Transportation Union.

The assignment in dispute was advertised as follows:

> "Assistant Conductor - Home crew base Florence, SC - Away-from-home crew base Savannah, GA - after taking rest at Savannah, a turnaround trip between Savannah, GA and Columbia, Sc. Take rest a second time at Savannah, after which the assignment works back to Florence, SC."

The Board's ruling in regard to this assignment, reads in part pertinent:

> "If operationally the Carrier wants to make use of this employee by laying them *over* in Savannah and working them to Columbus (sic) and back to Savannah (then hooking up with his original crew for the return trip to Florence) then they must comply with Rule 2(d) and treat his time after his tie up in Savannah (his layover point) after working from Florence (his home base) as held time **in addition to any additional work assignment.** Florence is the employee's only home base and he is entitled to be paid for time out of this base per Rule *2(d).*" (Emphasis added) 12/22/98

PLB 6189 - Award No.9 - Claimants time was cut because the Carrier claimed they should have deadheaded by train instead of a Van. The Carrier paid train time. The Board **SUSTAINED** our claim for actual time consumed deadheading by Van. March 99

PLB 6189 - Award No. 3 - Service time cut to correspond with the arrival time recorded by Amtrak, plus an additional 10 minutes, which is the so-called standard release time. Claimed continuous time as shown on the timecard. **DENIED.** 6/5/00

PLB 5953 - Case No. 28 - deals with a notice that was issued concerning the Hours of Service Act in regard to when an extra list employee/s time begins and ends for purposes of Rule 2 (b). *6/5/00*

PLB 6312 - Award No. 24 – Held time pay **denied** when attending training class at other than the employee/s Home Crew Base.

OC-UTU-SD-679 and SD- 680 - Claimants were asked to work out of <u>other</u> than their home crew base, for which they were to be allowed held time (Rule 2 {d}), while at other than their home crew base, in the same way as if they were held at an away from home crew base in straight-away-service. Their claims for held time were initially denied, and then allowed when the office of the General Chairman handled these cases with the Director-Labor Relations.

NEC-UTU-SD-317 -- This case involved Rule 2(b) of the On-Corridor Agreement. Below is the statement of facts and the position we took when this case was discussed with the Carrier. 8/5/02

STATEMENT OF FACTS:

Claimant was the incumbent on assignment CWS-13A with a workweek as follows:

Date	Day of Week	Assignment	On &Off Duty
Oct. 6, 1997	Monday	CWS-13A	8:59 AM to 4:59 PM
Oct. 7, 1997	Tuesday	CWS-13A	8:59 AM to 4:59 PM
Oct. 8, 1997	Wed.	CWS-13A	8:59 AM to 4:59 PM
Oct. 9, 1997	Thurs.	AXYAOG	3:59 AM to 7:59 AM
Oct. 9, 1997	Thurs.	CWS-13A	8:59 AM to 3:59 PM
Oct. 10, 1997	Friday	CWS-13A	8:59 AM to 4:59 PM

Claimant applied for the time and one-half rate for October 10, 1997 on the basis that he should have been paid 40 straight time hours prior to working CWS-13A on October 10, 1997, therefore, compensation for October 10, 1997 would be as provided for in Rule 2 (b), reading in part pertinent:

> "Employees paid 40 straight-time hours in a workweek will be paid at the time and one-half rate for all additional time paid in the workweek."

This case came down to the question of what the Claimant worked on October 9, 1997. The answer can be found in Award No. 5 of Public Law Board No. 4392 wherein the Carrier prevailed in their argument that such constitutes separate assignments under Rule 2. Also, see Public Law Board No. 4874, Award No. 42. Having established that Claimant worked two (2) separate assignments on October 9, 1997, it becomes clear that he is entitled to the time and one-half rate for October 10, 1997. 12/22/98 ambdawds

Disposition: Carrier sustained the claim.

PLB 6312 - Award No. 204 – Claim for second Engineer rate of pay denied when complying with the following notice:

"AMTRAK

OPERATIONS DEPARTMENT

SOUTHERN DIVISION

GENERAL NOTICE

NUMBER SOU-2003-02

EFFECTIVE JANUARY 21, 2003

"ITEM: 1 SINGLE ENGINEER ASSIGNMENTS RECEIVING TRAIN DIRECTIVES

"When a train with a single engineer assignment receives an enroute movement authority by radio from a dispatcher then engineer is required to stop the train to receive, write and confirm the movement authority with the dispatcher. This has resulted in significant train delays. Effective with this notice to reduce and/or eliminate train delays from enroute movement authority requirements on trains with a single engineer the Conductor will ride the locomotive or make arrangements to place a qualified employee in the locomotive for the purpose of copying mandatory train directives such as DTC or TWC operations when it is known that such authority will be needed.

"ISSUED BY: Jay McArthur
"DATE: January 21, 2003" 6/23/05

OC-UTU-SD-865 – Claimant J. M. Crawley – held time pay (Rule 2[d]) allowed when a San Antonio extra board employee was sent to work the Little Rock extra board for three (3) days. Claimant was allowed three (3) held time claims of eight (8) hours each, in addition to what he earned while working out of Little Rock.

NOTE: We prepared a brief in this case, however, it settled before it went to the Board. 6/23/05

***PLB 4682, Award No. 1* – Decision:**

> "Therefore, it is the decision of this Board that Rule 2 (d) of the Rules Agreement dated January 29, 1986, contemplates that a 12-hour non-compensable period must expire in the second 24-hour period before compensable 'held' time beings anew. *Filed in Rule 2 Off-Corridor.* 6/23/05

***PLB 6312, Award No. 248* -** Held Time Pay – Employee held 35 hours and 15 minutes used to a third city was denied held time pay, contrary to the Tri-City decision. See Labor's Dissent. 1/8/07

***PLB 6312, Award No. 271* –** Service time beyond the standard release time for completing a paperless time ticket (PTT) through the use of a computer was denied.

***PLB 6312, Award No. 233* –** Erroneous Award concerning pilot service. See our dissent.

Public Law Board No. 6312, Award No. 321 – Denied a claim from an Assistant Conductor for a separate start pursuant to Rule 17(b) at the time and one-half rate for being required to perform service beyond the normal relieving point of the train due to a short crew on the relieving train. The Board ruled as follows:

> "It is evident to the Board that no "emergency" existed when it came to Claimant's service from Toledo to Chicago. The Board agrees with the reasoning set forth in Award No. 42 of Public Law Board No. 4874 that a "manpower shortage" does not amount to an "emergency." The Board is not persuaded by the Organization's argument that an "emergency" was avoided by the Carrier because Claimant was utilized for service from Toledo to Chicago. As the Carrier observes, the utilization of only a Conductor would not have been an "emergency," though it would have been a violation of the crew consist agreement under Rule 11. No emergency was therefore avoided by the Carrier's utilization of Claimant, and, under Rule 2, Claimant was properly compensated."

RULE 3 - ENTRY RATES

PLB 5463- Award No. 1 - filed in Rule 3 Amtrak On and Off Corridor - Employees in training between the time of their physical and when they first perform service on a bona-fide vacancy, are not subject to the provisions of Rule 3 or any other sections of our Agreement. Stated differently, they do not become employees for purposes of our Agreement until they complete training. 11/4/94

PLB 6189 – Award No. 21 - The Letter of Agreement dated July 3, 1996, applies unconditionally to all those employees with previous experience in train service with another Carrier.

NOTE: By letter dated January 25, 2001, the Carrier abrogated the Letter of Agreement dated July 3, 1996. Accordingly, the Letter of Agreement dated July 3, 1996, applies only to those employees hired on or after July 3, 1996, and before February 15, 2001.

RULE 4 – SENIORITY

PLB 5157 – Award No. 8 – Furloughed employee, while working in another craft, is discharged. The Organization argued that his seniority in the craft from which he was furloughed (Switchmen) remained intact. Claim **DENIED.** Filed under Rule 4, Amtrak On and Off Corridor. 6/5/00

PLB 6140 – Award No. 12 – Seniority forfeited is not reversed because the employee is left on the roster.

PLB 6817, Award No. 25 – Claimant Linda Goyette – Denied right of employment with MBCR based on a reinstatement letter from Amtrak. Claim sustained for back pay and employment with MBCR.

RULE 7 – PROMOTION

OC-UTU-SD-701 – A. W. Fletcher, Claimant not allowed to take promotion in a timely manner as set-froth in that portion of Rule 7 quoted below:

> "1. Assistant Passenger Conductors must complete a Passenger Conductor Training Course, including a written promotional examination and re-test if necessary, within six (6) months from their start of work as an Assistant Passenger Conductor."

This case and the other like cases were settled as set-forth in the following Memorandum:

> **"DATE: October 16, 2001**
>
> **TO: A. L. Suozzo**
>
> **FROM: R. M. Lenfest**
>
> **RE: Rule 7**
>
> ---
>
> "On October 10, 2001, I met with Lorraine McLaughlin in order to place a dollar amount on the claims from Boston, MA (Zone CS-1) settled by the General Chairman in Docket BOS-UTU-99/0300 (A. W. Fletcher).
>
> "The claims have been resolved by paying each claimant the difference in pay between conductor's rate and assistant conductor's rate currently in effect at 100% rate of pay. That figure is $25.60. There were ten (10) claimants who submitted 1712 individual time claims between them. The following is a list of claimants, the number of dates attributed to each claimant, and the dollar amount each one should receive.

"NAME	CLAIMS	AMOUNT
D. Bonanno	117	$2,995.20
D. Cadogan	276	7,065.60
A. Fletcher	26	665.60
P. Iarossi	33	844.80
P. Kwong	243	6,220.80
W. Nourse	350	8,960.00

J. TaKesian	32	819.20
L. Valls	234	5,990.40
R. Ward	348	8,908.80
TOTAL	**1,712 Claims**	**43,827.20"**

NOTE: A brief was prepared in this case, should we need it in the future. 11/15/01

WORK ZONE 6 – MIAMI CREW BASE – D. D. Feighner & F. F. Garner were forced assigned on June 16, 2006 to vacant Yard Conductor positions that failed for bid. However, there were junior Assistant Conductors assigned to the Miami Crew Base with six (6) months of service (minimum of ten (10) days worked per month) that had not been promoted to Conductors. Therefore, Feighner & Garner could not be force assigned. See Rule 7 (b)(b). It was agreed with Bill Robinson from the office of the Director of Labor Relations that Feighner & Garner would be paid 90 minutes straight-time per day beginning on June 16, 2006, until the junior non-promoted Assistant Conductors are promoted. *See Rule 7 file. 1/8/07*

PLB 6312, Award No. 281 – Assistant Conductor being required to qualify on the physical characteristics of the railroad as part of promotion to Conductor is upheld. The decision follows Award No. 95 of PLB 6478.

RULE 8 - BULLETINS AND ASSIGNMENTS

NEC-UTU-SD-220 - **SUSTAINED**. - Claimant bid CYNR-2 on the change of time bulletin, however, he was not awarded the assignment because the Carrier lost his bid. The error was subsequently corrected when the Claimant produced a receipt, however, the delay resulted in the Claimant not being able to cover the assignment on the claim dates.

OC-UTU-SD-124 - Delay in notification of displacement causes the employee who was displaced to claim an open assignment that did not exist at the time he was displaced. Claim from extra list employee who would have worked the open assignment was settled for 5 days.

OC-UTU-SD-119 - Carrier failed to timely advertise a vacancy. Consequently the employee who eventually was the successful bidder claimed the difference in earnings from when the assignment should have been awarded until it was finally awarded. Claim **SUSTAINED.**

SBA-928 - Award No. 11 - Starting time of regular assignment moved up. Extra list employees submitted claim on the bases the assignment should have been filled extra. Claim **DENIED**. (Filed in Rule 8, On-Corridor.)

NEC-UTU-SD-173 - Starting time of regular assignment moved up from 10:30 PM to 6:00 PM. Claimant reported at 10:30 PM as advertised and was released and paid 4 hours. He claimed earnings of assignment. **SUSTAINED** for additional 4 hours, plus the Reduced Crew and Productivity Allowance.

OC-UTU-SD-198 - Claimant returned from vacation and claimed an assignment advertised but not yet filled. He informed Crew Management via fax. He had attempted to do so by phone. The assignment was awarded to a junior employee. Claimant **MADE WHOLE.**

PLB 4874 - Award No. 14 - Claim from extra list employee for using regular assigned employees to dog catch (Claim **DENIED**.)

PLB 5323 - Award No. 43 - Employee in Turnaround Service completes the first portion of his assignment to his turning point. The train he was advertised to work on the return portion of his assignment out of his turning point to his home crew base was annulled. Instead of being deadheaded, he was put in for rest and used the next day on the same train he was advertised to work back the previous day. The Board ruled he was entitled to be paid on a continuous time basis from when he went on duty at his home crew base until he released back at his home crew base. The principal here is a big one i.e. **The service status of an employee cannot be changed at the whim of the Carrier.** *Also see Award No.* 235 *of PLB 6312.* 11/4/94

PLB 5223 - Award No. 8 - The issue here was whether or not the Carrier could include Turnaround and Straight-away Service in one assignment. The Board ruled **"no restriction exists on the Carrier's right to construct an assignment in the manner which exists here."** 11/4/94

PLB-5323 - Award No. 68 - Rule 20 makes it clear that there is no requirement that Carrier pay Claimant for qualifying when she attempted to exercise her seniority to a Conductor position for which she was not qualified. Rule 9 provides that Carrier is not obligated to place an unqualified employee on the position. The effect of these two Rules, though, is that Claimant did effectively displace onto the position, but she was not entitled to actually take up service on the position until she became qualified. The wording of the above-quoted portion of Rule 9 makes it clear that there is a distinction between displacing onto a position, which is accomplished through the exercise of seniority, and taking up service on the position, which can only be done after the employee is qualified. 12/18/95 ambdawds

[illegible] a

***PLB-5323 - Award No.* 64** - What constitutes performing service for another assignment in instances when an inbound crew at a turning point is held to protect until the outbound crew takes charge of the train. The Board ruled that the inbound crew can be kept on duty performing protect service until relieved by the outbound crew. 12/18/95 ambdawds

***PLB-5323 - Award No.* 63** - Claimant used other then as advertised because of flooding conditions, claims the normal earnings of his assignment based on the make-whole principle established by PLB-4874, Award No. 46. The claim was **DENIED** because the claimant's assignment did not operate. 12/18/95 ambdawds

PLB-5223 - Award No. 20 - Separate Conductors and Assistant Conductors extra boards combined without the benefit of an advertisement. Claim for one (1) day's pay for each date. **DENIED.** 12/18/95 ambdawds

PLB* 6673- *Northeast Corridor Only

"AWARD

"On the basis of the record as a whole and for the reasons discussed, the Carrier is directed to rescind the practice of scheduling more than one turnaround trip between' the home crew base of the assignment and the turnaround point, all within the same tour of duty, absent an agreement for short turnaround intercity service." 1/31/07

***PLB* 5223 - *Award No.* 23** - Because of inclement weather, Claimant set back into the next day, after which he worked to the away from home crew base, arriving past the normal reporting time for the return trip. However, the return train was annulled. Claimant held over to the next day to work the same train back to the home crew base. Claim for' continuous time on the basis Claimant should have been deadheaded upon arrival at the away from home crew base was **DENIED.** 12/20/96

PLB* 5323 - *Award No. 100 - Claimants assigned to work between Harrisburg and Pittsburgh on trains 43 and 40. Due to the late arrival of 40 at Pittsburgh, Claimants were instead used to work No. 42, Pittsburgh to Harrisburg. Claimants applied for the difference between the amount earned, and the amount they would have earned had they worked No. 40. The claim was DENIED on the basis that the compensation received was equal to or exceeded the normal compensation for their assignment under "normal operations". The Referee relied upon the precedent set by Award No. 46 of PLB 4874. 12/20/96

PLB* 5323 - *Award No. 101 - The issue decided here involved whether or not the Carrier can hold a displaced employee on an assignment, until the employee making the displacement becomes qualified on the physical characteristics of the railroad. The Board ruled in part pertinent:

> *"...we interpret the Rule to provide that the incumbent does not come into possession of displacement rights until the senior employee becomes qualified and marks up on the job. Therefore" Claimant Raynor had no right to displace. Accordingly, there was no vacancy to be filled from the extra board, and Claimant Higgins had no right to work the job. "*

In view of this decision, the following BLE Question and Answer must now be applied to our agreement:

"Q. When a Passenger Engineer exercises displacement rights to an assignment for which he does not meet all qualifications, will the incumbent Passenger Engineer be considered immediately displaced?

"A. No; the incumbent Passenger Engineer will not be considered displaced until the displacing Passenger Engineer meets all the qualifications required of the assignment and physically displaces the incumbent." 12/20/96 ambdawds

OC-UTU-SD-306 - Facts: The last day Claimant worked prior to his vacation beginning on July 20, 1994, was on July 18, 1994 when he went off duty at 9:12 AM. The Carrier agreed to the following in the Statement of Facts: "Job Bulletins were not posted in the Denver crew room when Claimant went off duty, Monday, July 18, 1994."

Upon his return Claimant attempted to exercise his seniority to Assignment ADR-3 which was on the bulletin that was posted subsequent to the Claimant going off duty on Monday, July 18, 1994 and closed prior to his return. Claimant was denied an exercise of seniority to position ADR-3. In response thereto he filed for one day's pay for each date thereafter until he was awarded another assignment by bid.

Employees' Position: The Carrier confirmed in the Agreed Upon Facts that the Claimant was absent during the bidding period. Although Rule 8(g) may not specifically refer to a rest day or off time on a day on which service is performed and completed prior to a bulletin being posted, the fact remains, the rule recognizes that an employee absent during the entire bidding period is entitled to an exercise of seniority. The dictionary defines absent as "not present".

Clearly the Claimant was not present by the Carrier's own account of the situation. Consequently, he should have been afforded the exercise of seniority claimed herein. Resolution of this case is found in a letter dated October 16, 1996 from the Director of Labor Relations to the General Chairman reading in part here pertinent:

> "Due to the unique facts and circumstances surrounding this case, the Claimant will be allowed payment in the amount of $700.00. This payment represents full and final settlement of this case and is made without prejudice or precedent to the position of either party and will not be referred to in the handling of future claims of a similar nature." 12/20/96

OC-UTU-SD-338 and OC-UTU-SD-339 - Make Whole when used other than as advertised. 12/20/96 ambdawds

NEC-UTU-SD-283 - The issue involved in this case was whether or not an employee is automatically marked-up for service when he/she is awarded a position on an extra list. UTU took the position that the Claimant should have been marked-up for service in the same manner as is a regular employee who is awarded an assignment. In other words, once notified, the employee is obligated to report as advertised. For an extra list employee, once notified, the employee is obligated to protect the service. In either case (regular or extra) the employee is obligated to mark-off when they will not cover their assignment or will not be available for call in the case of an extra list employee. The Carrier agreed to make the employee "Whole" as if he had been marked-up for service as of the effective date and time of being awarded the extra list, which was 12:01 AM on April 2, 1995. 12/20/96

PLB 5953 – Case No. 27 – This case invoked the principle that an employee can only have one (1) Crew Base. Our claim was **DENIED** on the basis it was filed too late.

NOTE: The single Crew Base principle was upheld in the Tri-City dispute decision, Referee Gil Vernon. 6/5/00

PLB 6312 – Award No. 6 – Claimant required to attend a training class on a rest day. He claimed eight hours on the basis the Carrier violated the Agreement when they unilaterally cancelled his rest day by requiring him to attend class. **Claim denied.** 11/16/01

PLB 6312 - Award No. 43 – Carrier ignored the advertised turnaround point, and in lieu thereof, the crews were required to swap trains along the right of way whenever they met. Sustained for one (1) day's pay for each date on the basis the Carrier violated Rule 8. The Referee relied upon First Division Award No. 21215. This decision forced the Carrier to make payment in OC-UTU-SD-671, Claimant T. T. Pleasants, which was a companion case. 6/8/02

OC-UTU-SD-803 – Assignment not advertised timely. Claimant allowed two (2) hours for each date he would have worked the assignment, had it been advertised timely. 6/24/05

PLB 6312 - Award No. 206 – Claimant paid eleven (11) days pay because his assignment was changed to working a different train, and it was not readvertised as required by Rule 8(e)(5). Moreover, the award contains the following language:

> **"Moreover, the Board finds that it is appropriate to apply the 'minimum day rule' and award compensation. The Board's Neutral has consistently followed this approach in the past, and agrees with the Awards cited by the Organization calling for the application of the 'minimum day rule.' The Neutral respectfully disagrees with the Awards relied upon by the Carrier to the extent that a rationale can be found in those Awards that the Carrier's violation of a contract affecting a valuable right of member of the Organization should go uncompensated. The Board finds that an implicit part of the Parties' contractual understanding is the realization that contractual violations, at least as they affect individual members, will be compensated. This conclusion does not offend the rule against punitive damages."**

PLB 6312, Award No. 237 – Erroneous information provided the Claimant by CMS that he was not awarded a position caused the Claimant to lose a day's work. **SUSTAINED** for lost earnings. See the Award for the following:

> ". . ., the Board finds that the detailed time claim has not factually been refuted by the Carrier. The Board rejects the Carrier's characterization of the claim as being facially deficient on the ground that the Carrier did not know the name of the individual to whom Claimant spoke on the phone on February 29, 2004. The work place of that individual was sufficiently identified in the claim, the Board finds, and the Carrier has not posited any credible reason why it could not reasonably ascertain the individual's identity and have either accepted or refuted the factual contention of the claim." 1/8/07

NEC-UTU-SD-456 – STATEMENT OF FACTS: The awarding of assignment AYP 100 was made effective on Thursday, March 26, 2003, which meant the person who was awarded the position, A. H. Tweedle, was left to work assignment CPN 106 on Monday, Tuesday, and Wednesday, March 24, 25, and 26, 2003. Had assignment AYP 100 been awarded to A. H. Tweedle on Monday, March 24, 2003, that would have meant that the assignment he vacated, CPN 106, would have been filled extra by the Claimants.

EMPLOYEES' POSITION: Rule 8 (a) required that assignment AYP 100 be made effective at 12:01 AM on Monday, March 24, 2003. Therefore, the Claimants are entitled to the eight (8) hours claimed for the Carrier's violation of Rule 13 when they used a non-extra board employee to fill position CPN 106. See Public Law Board No. 5223, Award No. 12.

Claims **SUSTAINED.**

NOTE: This was paid without the usual disclaims. Also, there was a brief prepared if needed for a future case of a similar nature. 1/8/07

PLB 6312, Award No. 206 – Regular assigned employee paid eight (8) hours each date beginning on February 10, 2003 through February 28, 2003 when the Carrier changed his assignment to working a different train without readvertising the assignment as required by Rule 8(E)(5).

PLB 6312, Award No. 262 – Involves working through a home crew base. The claim of extra board employees that the work was theirs to perform was denied on the basis no vacancies existed that had to be filled, but rather a temporary change of the assignment occurred for the employees that were run through because the train was late. We did not dissent because the flip side is if there was an assignment advertised to work the train, the extra board claim should be sustained.

RULE 9 - REDUCING AND INCREASING FORCES

OC-UTU-SD-74 - Employee allegedly off sick returns to duty, which caused the claimant to be furloughed. Subsequently the Carrier determined the employee off sick had been working for Conrail, which should have put him to the bottom of the roster. Claim **SUSTAINED** for 8 hours for being furloughed while junior employee was working.

OC-UTU-SD-154 - Settled for a day's pay on the basis the claimants did not receive the 5 days advance notice required prior to abolishment of their assignment. *Also see OC-UTU-SD-454.*

PLB 4874 - Award No. 31 - Claim for not being given five days notification of an abolishment of an extra list position. Claim **DENIED**.

PLB-5323 - Award No. 68 - Rule 20 makes it clear that there is no requirement that Carrier pay Claimant for qualifying when she attempted to exercise her seniority to a Conductor position for which she was not qualified. Rule 9 provides that Carrier is not obligated to place an unqualified employee on the position. The effect of these two Rules, though, is that Claimant did effectively displace onto the position, but she was not entitled to actually take up service on the position until she became qualified. The wording of the above-quoted portion of Rule 9 makes it clear that there is a distinction between displacing onto a position, which is accomplished through the exercise of seniority, and taking up service on the position, which can only be done after the employee is qualified. 12/18/95 ambdawds

PLB 5323 - Award No. 101 - The issue decided here involved whether or not the Carrier can hold a displaced employee on an assignment, until the employee making the displacement becomes qualified on the physical characteristics of the railroad. The Board ruled in part pertinent:

PLB 5323 - Award No. 101

> "...we interpret the Rule to provide that the incumbent does not come into possession of displacement rights until the senior employee becomes qualified and marks up on the job. Therefore, Claimant Raynor had no right to displace. Accordingly, there was no vacancy to be filled from the extra board, and Claimant Higgins had no right to work the job."

In view of this decision, the following BLE Question and Answer must now be applied to our agreement:

> "Q. When a Passenger Engineer exercises displacement rights to an assignment for which he does not meet all qualifications, will the incumbent Passenger Engineer be considered immediately displaced?
>
> "A. No; the incumbent Passenger Engineer will not be considered displaced until the displacing Passenger Engineer meets all the qualifications required of the assignment and physically displaces the incumbent." 12/20/96 ambdawds

OC-UTU-SD-685 – An attempt was made, without success, to notify the Claimant on her rest day that she had been displaced. She reported for work on her first day back (September 27, 2000) following her rest days, at her on-duty work location, Lowell, at 5:15 AM, Run 331, and worked the first train of her assignment, Train #302, into Boston. It was only after she arrived in Boston that she was made aware of the fact that J. Zola had displaced her. The employee who made the displacement, J. Zola, had car trouble, which precluded her from reporting at Lowell, at 5:15 AM, to work Train No. 302, from Lowell to Boston. The Claimant

filed for the earnings of her assignment (AWLO-1), which was **sustained**. At the local level the Claimant had only been allowed time consumed working Train #331, i.e., 1 hour and 50 minutes. 6/20/02

PLB 6312, Award No. 190 – Claimant displaced and denied a displacement against a junior employee. **DENIED** for lack of evidence.

OC-UTU-SD-1915 - D. Gardner-Smith – Improperly denied an exercise of seniority. Paid two (2) hours for 23 dates the Claimant should have been on the assignment she attempted to displace. The assignment worked for the 23 dates almost paid the same as the assignment that should have been worked. 1/8/07

PLB 6478, Award No. 99 – Claimant terminated under Rule 9(d). Appeal denied based on a conclusion that fifty-seven (57) days was too late to file an appeal. See Labor's dissent. 1/8/07

PLB 6076, Case No. 10 – Message left on an answering machine required a follow-up call.

PLB 6312, Award No. 264 – Advised in error of displacement. Failed to report. Allowed lost earnings. Important in regard to the Claimant's assertion was accepted as true because the Carrier failed to review the CMS tapes and offer evidence to refute the assertion.

PLB 6312, Award No. 284 – Displacement denied pending training on <u>other</u> than the physical characteristics of the railroad is deemed a violation of Rule 20(B) in that the Claimant should have been allowed the earnings of the assignment while in training.

RULE 10 - ANNULMENT OF ASSIGNMENTS

NEC-UTU-SD-239 - Claimant reported for work to find his assignment annulled in connection with the CSX strike. Only paid 2 hours as if the second paragraph of Rule 10 (b) applied. Case **SUSTAINED** for an additional 6 hours for a total of 8 hours for improper notification under Rule 10 (a) inasmuch as there was sufficient time for advance notice i.e., Train #67 makes up at Boston and departs 10:10 PM. Claimant reported at 4:53 AM.

OC-UTU-SD-223 - *Conductor J. T. Scott* held assignment CRW-3 (Richmond, Virginia to Washington, DC). On March 13, 1993 Conductor Scott marked up for his assignment at 11:45 am. At approximately 12:15 PM, Crew Management Services contacted Conductor Scott advising him that due to the severity of the snow storm the East Coast was experiencing, his assignment was annulled. Claim **SUSTAINED** for eight hours minus 2 hours previously allowed.

***PLB* 5323 - *Award No.* 45** - Deals with the first leg of a straight-away assignment being annulled and an employee's right to work the second-leg out of the away from home crew base. The Board ruled in part here pertinent as follows: "While it is true that Claimant remained the assigned employee on Train 88, the critical question is at what point were the emergency conditions terminated. It is not logical for the rule to require the Carrier to place Claimant on a train to South Carolina if the emergency conditions continued for such a time that there was no way to get him there. If, on the other hand, he could have been deadheaded in some manner to Florence in sufficient time to be rested to take up service on Train 88, Carrier had an obligation to do so.

"In this case, the Carrier has asserted that the weather conditions were so severe that it would have been impossible for Claimant to get from Washington to Florence in sufficient time to work Train 88. The Organization .has not refuted the Carrier's assertion. We must, therefore, accept it as factual. Based upon the particular facts in this case, we find the **Agreement was not violated."** 11/4/94

PLB* 5223 - *Award No.5 - The issue here was whether or not the Carrier can annul an extra list as a result of a suspension of all service. We argued that Rule 10 had no application in regard to extra lists. The Board ruled in part here pertinent as follows:

"It is the opinion of the Board that the interpretation urged by the union is overly technical to the extent of robbing Rule 10(b) of any practical or meaningful application. Obviously the general intent of Rule 10(b) is to recognize the Carrier's right to suspend operations under the enumerated conditions and to waive the advance notice requirements that might otherwise exist." **DENIED.** 11/4/94

***PLB* 5323 - *Award No.* 81** - On date of claim, the regularly assigned Assistant Passenger Conductors on three MBTA assignments marked off. Claimants, who were assigned to the extra board, were not called for any of these positions. Instead, Carrier elected to blank the vacancies i.e., not fill them. Under the requirements for minimum crews, it was not necessary that these positions work.

The Organization contends Carrier had an obligation to annul the three positions. Because it failed to do so, the Organization asserts that vacancies existed that should have been filled. Claimants, as extra board employees, stood to fill these vacancies. They performed no service on the date of claim. The Organization acknowledges that had the Carrier annulled the jobs, Claimants would not have had a right to work.

A vacancy does not exist solely because there is no employee on the job. There must also be a need for the employee. Had Carrier been required to fill these jobs to satisfy the minimum crew requirements, a vacancy would have occurred. In this case, however, Carrier had discretion over whether it would call another employee or leave the position empty. It chose the latter.

An annulment was not necessary in these cases because the regular incumbents had already marked off. The purpose of the annulment is to protect the incumbent. It gives him/her notice that the job would not be worked and might create displacement rights. In this case, annulling the jobs would have been a needless exercise. The incumbents were already not coming to work. They would, therefore, not be entitled to displace.

As Carrier had a right to blank the positions, there were no vacancies for which Claimants had a right to be called. The Agreement, therefore, was not violated. **DENIED.** 12/18/95

***PLB* 5223 - *Award No.* 23** - Because of inclement weather, Claimant set back into the next day, after which he worked to the away from home crew base, arriving past the normal reporting time for the return trip. However, the return train was annulled. Claimant held over to the next day to work the same train back to the home crew base. Claim for continuous time on the basis Claimant should have been deadheaded upon arrival at the away from home crew base was **DENIED.** 12/20/96

***PLB* 5323 - *Award No.* 71 - DENIED** displacement in connection with an emergency annulment. **(See labor's dissent.)** 12/20/96

***OC-UTU-SD-395* -** Assignment annulled. Extra crew used in their place. **Sustained** for eight (8) hours on each of three dates. 12/18/97

***PLB* 5953 - *Case No.* 25** - Claimants' assignment setback until the following day at the away from home crew base because of weather conditions. The UTU claimed continuous time on the basis the Carrier failed to follow the procedures set-forth in Rule 15 for a setback. The Carrier argued Rule 10 applied, i.e., assignment annulled, not setback. The Neutral ruled in favor of the Carrier.

PLB 6312 – Award No. 5 – Deals with filling only the second half of an assignment, which we argued constitutes a partial annulment, and a partial annulment is not permitted under our Agreement, except in an emergency. The Board ruled against us on the basis the Claimant was an extra list employee, and Rule 10 only applies to "regular assigned employee".

NEC-UTU-SD-512 – J. G. Turner, Assignment advertised to work on President's Day holiday and subsequently changed to be off on the holiday, however, Claimant was never notified his assignment had been annulled. Paid eight (8) hours pursuant to Rule 10.

PLB 6312, Award No. 242 – First leg of a straight-away assignment and part of the second leg did not operate. Therefore, the assignment was properly annulled in its entirety. 1/8/07

OC-UTU-SD-1917 – J. J. Kipka - Claimant's assignment annulled out of the home crew base, but not out of the away-from home crew base. Paid eight (8) hours for not being deadheaded to the away-from-home crew base to work the return leg of his assignment. 1/8/07

PLB 6312, Award No. 267 – First half of a straight away assignment is annulled and the second half/return trip was worked by other than the incumbent. We relied on Award No. 45 of PLB 5323 to argue the incumbent should have been deadheaded to the away-from-home crew base to work the return trip. Denied on the basis that there was not a sufficient showing that the Claimant could have been deadheaded.

PLB 6312, Award No. 300 – Employee advertised to work Train 2119 from New York to Washington and deadhead back is used instead to work Train No. 175, New York to Philadelphia because Train 2119 was annulled. Claim for eight hours is denied.

NEC-UTU-SD-632, I. Andrews - This case asks a simple question, i.e., was the Carrier relieved of their contractual obligation to provide eight (8) hours advance notice of the annulment of the Claimant's assignment (Rule 10 (A)) by allowing the Claimant to report to work for his regular assignment (CPN-606 Conductor Train No. 1663 to Washington, DC and deadhead combined with service on Acela No. 2168 from Washington to Philadelphia, signing off at 3:34 PM) and using him instead to fill an Assistant Conductor's vacancy in yard service at Philadelphia, assignment AYP-611. This case was due for a hearing before PLB 6312 on July 27, 2007. However, it was settled for eight (8) hours by letter dated July 20, 2007. There was a brief prepared if needed in the future.

RULE 11 - CREW CONSIST

PLB 3516 - Award No. 14 - Claim for Reduced Crew Allowance and Productivity Allowance. **SUSTAINED** for the crew members who worked a train while the second assistant conductor was used as a fireman.

PLB 4874 - Award No. 18 - Claim for a day's pay for working a regular assignment which involved working with two different conductors and a flagman during the same tour of duty. (**DENIED**) 6/18/02

PLB 4874 - Award No. 22 - Claim **SUSTAINED** for one days' pay for an extra list employee when the Carrier used the assistant conductor on a relief crew as the fireman thereby operating the train with a conductor only.

PLB 4874 - Award No. 37 - The issue in dispute concerned the contention that the American European Express (AEE) cars, which were carried on Amtrak Train Nos. 29 and 30 on a contract basis are revenue passenger cars to be counted in determining the crew consist requirements set forth in Rule 11. In so counting the

AEE cars, an additional assistant passenger conductor should have been called for service on such trains. Claim **DENIED**. 6/18/02

PLB 4874 - Award No. 13 - Amtrak used a BN crew to operate an Amtrak train claiming an emergency. (Claim **SUSTAINED** for 8 hours)

PLB 5323 - Award No. 42 - deals with the Metrolink Service in connection with Crew Consist. The Board ruled as follows: "Although fares are not collected on the train, the Carrier has required conductors to 'verify' fares. This entails asking passengers to display their tickets and performing spot checks to determine that they have proper transportation. There is no indication that the Conductor is required to collect a fare if the passenger does not possess a valid ticket. Instructions issued by the Carrier indicate that the Conductor is not expected to verify all tickets on the train. In fact, when that is required the Carrier has assured the employees that an extra-board employee will be assigned to assist the Conductor. Instead, the Carrier has left it up to the individual Conductor to determine how many tickets will be inspected, keeping in mind that the Conductor's first responsibility is the safe operation of the train.

> "The Organization characterizes this verification as the same as revenue collection. It asserts the Carrier assured the Organization that Rule 11 would be applicable if fare collection or verification were to be required. It acknowledges that this understanding was not reduced to writing.
>
> "We agree with the Carrier that the exemption from Rule 11 under any circumstances, that intent should have been incorporated into the Agreement. For whatever reason, it was not, and it is beyond the powers of this Board to add to the Agreement. The Agreement establishes a crew size of one Conductor and is silent as to what may be required of him/her. There is no basis for the Organization's claim that Carrier was obligated to utilize any additional employees. The **Agreement was not violated**." 11/4/94

PLB-3713 - Award No. 5 - Manning lite engine moves with a Conductor and/or an Assistant Conductor. **DENIED**. Filed in Rule 11 On and Off Corridor**.** 12/18/95

PLB 6189 – Award No. 1 – A group charter of a seventeen (17) car train did not include a second Assistant Conductor, as required by Rule 11 (c). The Carrier claimed that Charter Service does not constitute the use of revenue cars, as the term "revenue passenger car" is defined in Rule 11 (d). The Board rejected the Carrier's argument and **SUSTAINED** our claim for one (1) day's pay, albeit with an offset, which we objected to as set forth in the UTU Concurring Opinion. 6/5/00

PLB 6312 – Award No. 21 – A charter train is subject to be manned in accordance with Rule 11. In this case a two (2) car train carried the Philadelphia Orchestra to New York (round trip) and there was no Assistant Conductor used, which violated Rule 11 (b). Claim **SUSTAINED** for eight (8) hours.

PLB 6189 - Award No. 15 – A car filed with only containers does not qualify as a revenue car, even though a train service employee had to unlock and relock the car in order for the containers to be loaded and unloaded. 6/18/02

PLB 6312, Award No. 104 – Said decision reads in part pertinent:

> "As to Claimant Himes, the record reflects that Himes was not required to work on Trains 41 and 40 on May 17, 2001, nor does the record indicate that Himes was 'available' to work on Trains 41 and 40. Thus, the Board finds that, unless the Claimant was required, as were Claimants Garcia and Lewis, to work on a smaller than required crew consist or was 'available' for the assignment in question, Rule 24(d) precludes that Claimant from pursuing the claim for relief. In view of this conclusion, the Board need not consider whether Rule 11 was violated on May 17, 2001, as to Trains 41 and 40, as set for the in the Himes' claim, since Himes, in short, was not a proper Claimant."

The above makes it clear that in order to be a proper Claimant in a crew consist violation case, the employee must be available to work the assignment or have worked the assignment with less than the required number of crew members.

The decision is also significant in that it confirms the fact that "A baggage car that is 'scheduled to be worked' may not 'be worked' and nevertheless qualify as a 'revenue passenger car' within the meaning of Rule 11."5/28/04

PLB 6312, Award No. 186 – Loading/unloading containers – **DENIED** in regard to counting the baggage car as a revenue car in accordance with Rule 11 (e).

OC-UTU-SD-781 – Claimant J. Groene – Regular crew replaced at the away-from-home crew base by an extra crew because the regular crew arrived too late to work their return trip. The Carrier claimed the extra crew was a relief crew, therefore, only one (1) Assistant Conductor was assigned pursuant to Rule 11(b). The UTU argued that such a crew is not a relief crew, therefore, the crew should have included a second Assistant Conductor pursuant to Rule 11(c). The Carrier conceded that Rule 11 (c) was controlling by allowing payment by letter dated January 10 2003.

NOTE: A brief was prepared in this case, should we need it in the future. 5/28/04

PLB 6312, Award No. 38 – The single handicapped seat in a café car does not qualify the car as a revenue car for purposes of applying Rule 11 5/28/04

PLB 6312, Award No. 225 – Two (2) single employee assignments can be used to work together to perform switching, in lieu of using a yard crew. 1/8/07

PLB 6312, Award No. 219 – The Claimant worked a straight-away assignment to the away-from-home crew base, took rest, then worked back to the home crew base, all on the same calendar day, and without an Assistant Conductor in both directions. The Carrier argued that only one (1) claim for eight (8) hours should be allowed. The Board rejected the Carrier's argument and awarded two (2) claims for eight (8) hours, i.e., one (1) in each direction. 1/8/07

PLB 6312, Award No. 155A - The Carrier argued that only 13% of the trip remained when the violation occurred, therefore, the appropriate payment for the violation should be 13% of eight (8) hours. The Board rejected the Carrier's argument and awarded eight (8) hours. 1/8/07

PLB 6312, Award No. 209 – Strong language to support a claim for eight (8) hours for a violation of Rule 11. 1/8/07

PLB 6312, Award No. 89(a) – A Metroliner Table Car Case - **DENIED.** 1/8/07

PLB 6312, Award No. 226 – Brandt Power Unit Case – **DENIED.** 1/8/07

PLB 6312, Award No. 283 – An Assistant Conductor that rides in the rear section of a train separated by an engine in the middle, with the front section used to transport the passengers, is not considered the Assistant Conductor that Rule 11(B) requires be assigned to assist the Conductor. Claim sustained for eight hours.

PLB 6312, Award No. 275 – Assistant Conductor rode in the locomotive for 7.9 miles in order to operate a hand switch. Claim for working without an Assistant Conductor in the body of the train was denied.

PLB 6312, Award Nos. 298 & 299 – Rule 11 violation for 10 minutes is "de minimus," therefore, no penalty awarded.

PLB 6312, Award No. 285 – One crew member on the engine to copy orders does not make for a crew consist violation for the remaining train crew member in the body of the train.

PLB 6312, Award No. 306 – G. Pearson – worked 41 miles without an Assistant Conductor which the Board considered a "substantial period." Paid eight hours.

RULE 12 - EXTRA BOARD

OC-UTU-SD-108 - Guarantee broken because of refusing to accept an assistant conductor's position while working a conductors' extra board. **SUSTAINED**

OC-UTU-SD-137 - Combination extra list/employee first out was not qualified on physical characteristics, however, he was ordered to be the conductor. The claimant was second out and qualified on the physical characteristics, and he was used as the assistant conductor on the same yard assignment. Claimant applied for conductors' rates on the basis he should have been the conductor, since he was qualified on the physical characteristics. Claim **SUSTAINED**.

PLB 4874 - Award No. 13 - Amtrak used a BN crew to operate an Amtrak train. Extra List employee who stood for the service was **allowed one (1) day's pay.**

PLB 4874 - Award No. 14 - Claim from extra list employee for using regular assigned employees to dog catch. **DENIED.**

OC-UTU-SD-104 - Regular man used on another assignment after completing his regular assignment while an extra man who had also completed his assignment was available. Claim **SUSTAINED** for 8 hours for the extra list employee.

OC-UTU-SD-98 - The employee first out on the Albuquerque combination extra board was used on COK-3, which is a conductor's position for which he was not

qualified. (Carrier used another member of the crew as a pilot.) The claimant was second out and was qualified; therefore, he claimed the earnings of the assignment Claim **SUSTAINED**.

PLB 6312, Award No. 297 – Extra board employee paid continuous time for two extra assignments worked in succession without a break in service.

See ***System Docket OC-UTU-SD-246*** for a **SUSTAINING** decision in a case involving an employee being run-around more than once being compensated four (4) hours for each time he was run-around.

PLB-5223 - Award No. 12 - The issue decided in this case was one of proper reparation when the Carrier uses an employee from other than the extra list that protects a vacancy, while an employee is available on said list. Claim **SUSTAINED** for one day's pay on the basis Rule 13 was violated. The Carrier argued Rule 12(i) was controlling, which the Board rejected. 11/4/94

PLB 5323 - Award No. 81 - On date of claim, the regularly assigned Assistant Passenger Conductors on three MBTA assignments marked off. Claimants, who were assigned to the extra board, were not called for any of these positions. Instead, Carrier elected to blank the vacancies, i.e., not fill them. Under the requirements for minimum crews, it was not necessary that these positions work.

The Organization contends Carrier had an obligation to annul the three positions. Because it failed to do so, the Organization asserts that vacancies existed that should have been filled. Claimants, as extra board employees, stood to fill these vacancies. They performed no service on the date of claim. The Organization acknowledges that had the Carrier annulled the jobs, Claimants would not have had a right to work.

A vacancy does not exist solely because there is no employee on the job. There must also be a need for the employee. Had Carrier been required to fill these jobs to satisfy the minimum crew requirements, a vacancy would have occurred. In this case, however, Carrier had discretion over whether it would call another employee or leave the position empty. It chose the latter.

An annulment was not necessary in these cases because the regular incumbents had already marked off. The purpose of the annulment is to protect the incumbent. It gives him/her notice that the job would not be worked and might create displacement rights. In this case, annulling the jobs would have been a needless exercise. The incumbents were already not coming to work. They would, therefore, not be entitled to displace.

As Carrier had a right to blank the positions, there were no vacancies for which Claimants had a right to be called. The Agreement, therefore, was not violated. **DENIED.** 12/18/95

PLB-5323 - Award No. 65 - Yard crew used in road territory other then as provided in Letter No. 4 of the On-Corridor Agreement paid in accordance with System Docket NEC-UTU-SD-19. Claim before the Board was from the extra list employee who stood for the service. The Board **SUSTAINED** his claim for one (1) day's pay. The principle here is important to our arguments in cases where an extra list loses a work opportunity, and also a dual remedy is appropriate, i.e. the fact the crew performing the service was paid a penalty does not negate the claim by the extra list employee who should have been used. 6/18/02

PLB-5323 - Award No. 47 - Extra list employee forced to work his rest day is entitled to the time and one-half rate. Also see OC-UTU-SD-850, Claimant K. D. Pipenhagen. 12/18/95

PLB-5323 - Award No. 69 - 7:00 AM work train reports without a conductor because the first out conductor's time is not up until 7:10 AM. He is ordered for 7:10 AM on the premise he can be started at a different time than the other members of the crew. We disagreed, however our claim was **DENIED.** We contended that the vacancy should have been filled by someone else to report at 7:00 AM with the rest of the crew. 12/18/95

PLB 5223 - Award No. 22 - Special duty assignments created at Chicago to Pilot reverse moves into the station. The Board ruled in our favor in regard to our claim that such work should have flowed to the extra list.

PLB-5323 - Award No. 99 - Extra list adjusted at 2:25 PM, which resulted in Claimant being cut from the Board. He displaced onto an assignment with an on-duty time of 3:40 PM on the same day, which he was unable to work until the following trip, i.e. he displaced onto the assignment too late to work the trip that began on the day he was cut from the Board. He filed for the earnings of the missed assignment on the basis the extra list should have been adjusted effective 12:01 AM, i.e. the extra list workweek had ended at midnight the previous day. We relied upon a Memorandum of Understanding dated February 27, 1984, which is quoted in the award, and it deals with adjusting extra boards. However, the case was DENIED. The findings of the Board were:

> "The parties are in agreement that the Weaver memorandum was intended to prevent abuses in the regulation of the extra boards whereby employees would be cut from the board one or two days before the end of the weekly period solely to deprive them of their guarantee. Thus, the memorandum directs that the board will not be cut until midnight of the seventh day. This purpose was not served in Claimant's case. This is not a matter of Claimant being reduced from the board to deprive him of a guarantee. He was on the board for less than one day of the weekly period. The Weaver memorandum was not intended to relate the regulation of the extra board with when employees would be able to displace onto other positions pursuant to Rule 17.a.2. That Rule contemplates that employees might lose work as a result of the timing of their displacements. We conclude, therefore, that the Agreement was not violated." 12/20/96

PLB 5323 - Award No. 101- The issue decided here involved whether or not the Carrier can hold a displaced employee on an assignment, until the employee making the displacement becomes qualified on the physical characteristics of the railroad. The Board ruled in part pertinent:

> " ... we interpret the Rule to provide that the incumbent does not come into possession of displacement rights until the senior employee becomes qualified and marks up on the job. Therefore, Claimant Raynor had no right to displace. Accordingly, there was no vacancy to be filled from the extra board, and Claimant Higgins had no right to work the job."

In view of this decision, the following BLE Question and Answer must now be applied to our agreement:

> "Q. When a Passenger Engineer exercises displacement rights to an assignment for which he does not meet all qualifications, will the incumbent Passenger Engineer be considered immediately displaced?
>
> "A. No; the incumbent Passenger Engineer will not be considered displaced until the displacing Passenger Engineer meets all the qualifications required of the assignment and physically displaces the incumbent." 12/20/96 ambdawds

NEC-UTU-SD-283 - The issue involved in this case was whether or not an employee is automatically marked-up for service when he/she is awarded a position on an extra list. UTU took the position that the Claimant should have been marked-up for service in the same manner as is a regular employee who is awarded an assignment. In other words, once notified, the employee is obligated to report as advertised. For an extra list employee, once notified, the employee is obligated to protect the service. In either case (regular or extra) the employee is obligated to mark-off when they will not cover their assignment or will not be available for call in the case of an extra list employee. The Carrier agreed to make the employee "Whole" as if he had been marked-up for service as of the effective date and time of being awarded the extra list, which was 12:01 AM on April 2, 1995. 12/20/96 ambdawds

OC-UTU-SD-318 - Any employee who came to Amtrak after January 15, 1992, as a result of the September 18, 1986 Letter of Understanding has a "train service seniority date" that is prior to January 15, 1992 and as such, he/she is guaranteed at the Conductors' rate while occupying a combined extra board. 12/20/96 ambdawds

> *STATEMENT OF FACTS:*
> Claimant was assigned to the Work Zone 2 Washington Crew Base Extra Board (Yard). On November 7, 1997, Claimant was called for assignment CWY-1A, reporting at Washington at 7:59 AM. F. W. White, who stood behind Claimant on the extra board, was called' for assignment CWYP-11A, also reporting at Washington at 7:59 AM. F. W. White was next used ahead of the Claimant on assignment CWS-14B, with an on-duty time of 3:59 PM on November 7, 1997. Claimant filed a four (4) hour runaround under Rule 12 (1) of the parties' Agreement, on the basis that he should *have* been called ahead of F. W. White for assignment CWS-14-B. **SUSTAINED.** March 99

PLB* 6312 - *Award No.3 - Harrisburg Crew Base extra board employee missed a call for an assignment that had to be paid starting at Harrisburg, to deadhead to Pittsburgh, to work from Pittsburgh to Harrisburg. Based on the time frame involved the UTU argued that the employee was called out of turn to report directly to Pittsburgh because she *lived* 25 miles from Pittsburgh. Therefore, the fact she was called out of turn prohibited the Carrier from breaking her guarantee. **Denied.**

OC-UTU-SD-674 - Both the Claimant and D. Marshall were members of the CS-1 Northside extra list on Sunday, August 1, 1999. Sunday, August 1, 1999 was a rest day for D. Marshal, while the Claimant worked Run 1309, registering off duty at 8:57 PM on August 1, 1999.

On Monday, August 2, 1999, D. Marshall was called for service ahead of the Claimant. In response thereto, the Claimant filed a claim under Rule 12 (I) for being runaround by D. Marshall for service on Monday, August 2, 1999. **Sustained**

PLB 6312 - Award No. 56 - And attached clarification - Multiple Runarounds- dropped to the bottom of the list improperly. Need to claim four (4) hours pursuant to Rule 12(i) for each and every employee the Claimant went behind. In doing so, besides providing complete details in regard to the circumstances that led to being dropped, the Claimant must also name each extra board employee he/she went behind, the assignment each employee worked, and the time the assignment went to work. 8/5/02

PLB 6312 – Award N. 196 – Claimant missed a call at home at 4:56PM. She had requested to be called on her beeper between 2:00PM and 4:30PM. We argued she still should have been called on her beeper at 4:56PM, however, the Referee did not agree. Therefore, she lost her extra board guarantee for the week. 6/23/05

PLB 6312 – Award No. 61 – Extra-Board employee called at 3:30AM for an assignment that went on duty at 7:30AM. Claimed a violation of Rule 12(f). **Denied. 5/28/04**

OC-UTU-SD-904 – Extra-board employee called for an assignment protected by a different extra-board, and the employee missed the call, which the Carrier treated as a missed call for guarantee purposes. We argued an employee can only miss a call for an assignment protected by the extra-board they occupy. The Carrier agreed to pay the extra-board guarantee.

NOTE: There is a brief prepared in this case, should we need it in the future. **5/28/04**

PLB 6312 – Award No. 60 – Carrier is not in violation of the Agreement by separating one (1) extra-board into two (2) extra-boards. **5/28/04**

PLB 6312 – Award No. 159 – Extra Board employee held at an outlying point through his/her rest day is considered forced to work their rest day, therefore, the time and one-half rate applies pursuant to Award No. 47 of Public Law Board 5323. **5/28/04**

OC-UTU-SD-1675 – Claimant registered on the extra-board first. However, the Carrier used an employee that registered on the extra-board after he did because the employee that registered second had not worked prior to registering on the extra-board. Claimant paid four (4) hours, pursuant to Rule 12(b) and (i). 1/8/07

PLB 6312 – Award No. 255 – Extra Board employee paid eight (8) hours when the Carrier brought in a regular employee four (4) hours early to fill the second half of an Assistant Conductor vacancy that had been filled for the first four hours by a regular employee whose time expired under the Hours of Service Act. 1/23/07

NEC-UTU-SD-682, A. Q. Robinson – Lost time claim while on an extra board. Initially paid only extra board guarantee of $70.04. Then paid $558.49 right before the case was to be heard by PLB 6312. Brief prepared if needed in the future.

PLB 6312, Award No. 268 – Claims for various extra board employees that were runaround were denied because "the penalty claims did not allege that Hawthorne stood behind the Claimants on the extra board but instead alleged that Hawthorne was not qualified for the extra board."

PLB 6312, Award No. 262 – Involves working through a home crew base. The claim of extra board employees that the work was theirs to perform was denied on the basis no vacancies existed that had to be filled, but rather a temporary change

of the assignment occurred for the employees that were run through because the train was late. We did not dissent because the flip side is if there was an assignment advertised to work the train, the extra board claim should be sustained.

PLB 6076, Case No. 10 – Message left on an answering machine required a follow-up call.

RULE 13 - FILLING CONDUCTORS' VACANCIES

NEC-UTU-SD-261 - Rest day employee who made application for the rest day extra list is **allowed 8 hours** when the Carrier used a rest day employee who had not made application for the rest day extra list. 11/4/94

PLB-5223 - Award No. 12 - The issue decided in this case was one of proper reparation when the Carrier uses an employee from other than the extra list that protects a vacancy, while an employee is available on said list. Claim **SUSTAINED** for one day's pay on the basis Rule 13 was violated. The Carrier argued Rule 12(i) was controlling, which the Board rejected. 11/4/94

PLB* 5323 - *Award No. 79

FACTS:
"On the date of claim, Claimant was regularly assigned to yard assignment AYL-1, coming on duty at Los Angeles at 6:05 am. Claimant reported for his assignment, and continued to work it until 8:05 am, at which time he was instructed to perform service as a Passenger Conductor on Train 572 from Los Angeles to San Diego and return on Train 581."

DECISION:
It appears to this Board that the Organization's claim is grounded upon its assertion that Claimant was not the appropriate employee to use for service on Trains 572 and 581 pursuant to Rule 13(b). That may well be true. The Rule sets out an order by which the Carrier is to utilize

employees when there is a day-to-day vacancy for a Conductor. None of those steps includes an employee in Claimants classification. Carrier would be privileged to reach Claimant for this vacancy only if there were no employees to be called using the procedures set forth in Rule 13(b). There is, however, no evidence that there were rested and available employees in any of the classifications set forth in the Rule. Even if there were, it would be that employee who would be the proper claimant in such a case.

The Rule, the way it is written, appears to establish an employee's right to work a job rather than establish the right not to. Thus, it would be the employee who was improperly denied the opportunity to work the vacancy who would have standing to file the claim. **DISMISSED**

NOTE: Also see Award No. 80 of PLB 5323 12/18/95

PLB-5323 - Award No. 57 - Conductor marks-off sick upon arrival at the final crew base of his assignment. Assistant Conductor continues working with the conductor of another assignment combining their two (2) trains into one (1) train for departure by a different crew. Assistant conductor claimed conductor's rates for the tour of duty on the basis he moved-up to the conductor's position on his assignment. The Carrier argued he was assigned to work together with the conductor on the other assignment who assumed the status of Claimant's conductor. Board rejected the Carrier's argument and **SUSTAINED** our claim. The principle here is important to our argument in regard to what constitutes an assignment. 12/18/95 ambdawds

PLB-5323 - Award No. 69 - 7:00 AM work train reports without a conductor because the first out conductor's time is not up until 7:10 AM. He is ordered for 7:10 AM on the premise he can be started at a different time than the other members' of the crew. We disagreed, however our claim was **DENIED.** We contended that the vacancy should have been filled by someone else to report at 7:00 AM with the rest of the crew. 12/18/95 ambdawds

PLB-5323 - Award No. 44 - Claimant was second out when the Carrier used a rest day employee ahead of the extra list. He filed for one (1) day's pay on the basis the Carrier violated Rule 13. **DENIED** on the basis only the first out employee is entitled to a day's pay. 12/18/95

PLB 5323 - Award No. 101 - The issue decided here involved whether or not the Carrier can hold a displaced employee on an assignment, until the employee making the displacement becomes qualified on the physical characteristics of the railroad. The Board ruled in part pertinent:

> " ... we interpret the Rule to provide that the incumbent does not come into possession of displacement rights until the senior employee becomes qualified and marks up on the job. Therefore, Claimant Raynor had no right to displace. Accordingly, there was no vacancy to be filled from the extra board, and Claimant Higgins had no right to work the job."

In view of this decision, the following BLE Question and Answer must now be applied to our agreement:

> "Q. When a Passenger Engineer exercises displacement rights to an assignment for which he does not meet all qualifications, will the incumbent Passenger Engineer be considered immediately displaced?
>
> "A. No; the incumbent Passenger Engineer will not be considered displaced until the displacing Passenger Engineer meets all the qualifications required of the assignment and physically displaces the incumbent." *12/20/96* ambdawds

First Division Award 16464 - Insight in regard to Conductor's duties versus that of a Brakeman (Assistant Conductor)(Rule 13 On Corridor) 6/18/02

OC-UTU-SD-519

STATEMENT OF FACTS:

Claimant was a member of the Forth Wayne extra board available to fill the Conductors' vacancy on Train No. 30 from Waterloo to Pittsburgh. The Carrier filled the vacancy by using the Conductor (Weaver) who had worked No. 30 from Chicago to Waterloo. Claimant filed a penalty claim on the basis the work belonged to the Fort Wayne extra board. ***Sustained.***

NOTE: *The claim* was *for four* (4) *hours. The proper claim under such circumstances is for 8 hours for* a *violation* of *Rule* 13 *(b). See Award No.* 12 *of PLB No. 5223.*

OC-UTU-SD-590

STATEMENT OF FACTS:

A Conductor's vacancy was filed on various dates by rest day employees who had not made application to work their rest days as required by Rule 49. Claimant was the junior available promoted and qualified Assistant Passenger Conductor at the crew base. His assignment was Assistant Conductor, Run 323, which signs-up at Newburyport, Massachusetts. He filed a claim for not being used on the vacancies that were filed by the relief day employees who had not made application to work their relief days, on the basis that he stood for the work as provided for in Rule 13 (b). Specifically, he claimed standing under Rule 13 (b)(5). **Sustained for 8 hours.**

PLB 6312 – Award No. 166 – Interprets the term "on the assignment" as used in Rule 13(b)(2) to mean on "legs" of the assignment, i.e., their assignment does not have to be identical to that of the Conductor. **5/28/04**

PLB 6312, Award No. 262 – Involves working through a home crew base. The claim of extra board employees that the work was theirs to perform was denied on the basis no vacancies existed that had to be filled, but rather a temporary change of the assignment occurred for the employees that were run through because the train was late. We did not dissent because the flip side is if there was an assignment advertised to work the train, the extra board claim should be sustained.

RULE 14 - DEADHEADING

PLB 4774 - Award No. 14 - Crew deadheaded for service at another location claimed deadheading and service combined as opposed to separate deadheading. **DENIED** on the basis service and deadheading can only be combined if the crew is so notified and the award references question and Answer No. 3 of the Questions and Answers applicable to Article VI of the October 31, 1985 National Agreement which reads as follows:

> "Q-3: How is a crew or individual to know whether or not deadheading is combined with service?
>
> "A-3: When deadheading for which called is combined with subsequent service, will be notified when called. When deadheading is to be combined with prior service, will be notified before being relieved from prior service. If not so notified, deadheading and service cannot be combined."

PLB 4874 - Awards No. 20 and 21 - Claim for time and one half for all time consumed in excess of 8 hours when deadheading separate from service. (**SUSTAINED**) Same issue *SUSTAINED by PLB 5223 - Award No. 13.* 11/4/94

See PLB 5223 - Award No. 1 for an explanation of the term deadheading and a **SUSTAINING** award for a separate day for deadheading because the Carrier failed to advise the Claimant to combine the deadheading with service.

PLB 4874 - Award No. 11 - Separate day claimed for deadheading in between two service trips because the Claimant was not notified to combine service and deadheading. **DENIED**.

OC-UTU-SD-310 - **SUSTAINED** for held time beginning 12 hours after actual off duty time when deadheading to an away from home crew base, rather than the advertised arrival time. 12/20/96

PLB 5323 - Award No. 85 - Separate day claimed when not ordered to combine service with deadheading, all of which occurred within the limits of a Crew Base. **DENIED.** 12/20/96

SBA 18 – Decision 5288 – Deadheading by airplane – *Filed in Rule 14 On and Off Corridor.*
6/5/00

PLB 6189 - Award No. 9 – Claim sustained for time consumed while deadheading that had been denied on the basis the crew should have deadheaded by train, instead of deadheading by van.

PLB 6312, Award No. 207 – Claimants ordered to deadhead combined with service, but the officer of the Corporation did not mark their timeslips accordingly.

OC-UTU-SD-1472 – Not notified to combine deadheading with service, therefore, the Claimant was paid for the deadheading separate and apart from service, i.e., paid eight (8) hours for the deadheading. **5/28/04**

OC-UTU-SD-982 – Involves payment separate and apart from service, pursuant to Rule 14(b)(2). **5/28/04**

OC-UTU-SD-1499 – Paid eight (8) hours for deadheading separate and apart from service because not instructed to combine the deadheading with service. **5/28/04**

PLB 6312, Award No. 266 – Denied eight (8) hours for deadheading separate and apart from service. See Dissent.

RULE 15 - DEFERRED STARTING TIME

OC-UTU-SD-194 - Not apprised of new starting time when setback. **SUSTAINED**.

PLB 5223 - Award No. 2 - Deals with failed attempts to notify an employee of a setback. The Board ruled in part pertinent as follows:

> "It is well established that when the Carrier makes reasonable attempts to contact an employee under such circumstances--even if unsuccessful--they have fulfilled their obligation. To rule otherwise and require the Carrier to give actual and not constructive notice, would be unreasonable. The employee could qualify for payments merely by avoiding direct contact. It is even conceivable that an employee could monitor telephone calls on an answering machine and get notice without actually speaking to the Carrier. The Carrier wouldn't be able to prove receipt of the notice. It would effectively gut the Carrier's ability to set assignments back.
>
> "Certainly the employee has no obligation to be available to answer the telephone. However, the Carrier's obligation ends at having made reasonable attempts to notify. Whether they have in any particular case is an individual determination. In this case there were three documented attempts made to his residence in advance of the two-hour set-back window. This constitutes constructive notice." 11/4/94

PLB 5223 - Award No. 23 - Because of inclement weather, Claimant set back into the next day, after which he worked to the away from home crew base, arriving past the normal reporting time for the return trip. However, the return train was annulled. Claimant held over to the next day to work the same train back to the home crew base. Claim for continuous time on the basis Claimant should

have been deadheaded upon arrival at the away from home crew base was **DENIED.** 12/20/96 ambdawds

OC-UTU-SD-435 – Claimants setback a second time in violation of Rule 15. **Sustained** for eight (8) hours for each Claimant. 11/28/01

PLB 5953 – Case No. 25 – Claimants' assignment setback until the following day at the away from home crew base because of weather conditions. The UTU claimed continuous time on the basis the Carrier failed to follow the procedures set-forth in Rule 15 for a setback. The Carrier argued Rule 10 applied, i.e., the assignment was annulled it was not setback. The Neutral ruled in favor of the Carrier.

RULE 16 - Laying Off/Reporting

Case No. 92-C-0825 – TCU vs. Green Bay and Western Railroad – decided in favor of the TCU where a Local Chairmen marked off for union business and was dismissed on the basis the Company needed his services on the dates in question, therefore, he could not be off and he laid off anyway. Claimant **REINSTATED** with full back pay.

See the following Awards in Rule 16 - Off-Corridor, for precedent regarding being denied time off.

SBA 255 - Award No. 137; PLB 717 - Awards No. 132 and 480; PLB 967 - Award No. 28.

PLB-5323 - Award No. 62 - Regular assigned employees must mark-up for service three (3) hours before the reporting time of their assignment, even in instances when the reporting time of their assignment has been deferred in accordance with Rule 15. 12/18/95

PLB 5916 – Awards 29, 30, 31 and 32 – Attendance. *Filed in Rule 16 Amtrak.* 6/5/00

PLB 3516 – Award No. 88 – Refused to work on the Sabbath.

RULE 17 - CALLS

PLB 4874 - Award No. 42 - Regular assigned employee works his regular assignment 2:00 PM to 10:00 PM. Called out to work a second assignment 11:59 PM to 2:00 AM. Claim **SUSTAINED** for a separate day for the second assignment rather than being compensated in accordance with Rule 17 (b) as contended by the Carrier. Award provides insight into determining when Rule 17 (b) is applicable.

PLB 4392 - Award 5 - Claimant worked two separate assignments on the same date with a four-hour break between assignments. He claimed the time and one half rate for the second assignment under Rule 17 (b). **DENIED**. 6/18/02

PLB 4392 - Award No. 6 - Claimant used in a combination of yard and road service. Claimed separate compensation. Claim **DENIED**.

NOTE: ***Not applicable in the On-Corridor service or at Chicago.***

***PLB* 5323 - *Award No.* 52** - Claimant was in for rest at an away-from-home crew base, and was contacted in the middle of the night by the Crew Dispatcher, and asked for information in regard to the identity of the Engineman on Claimant's assignment. Claimant filed for one (1) days pay for doing clerical work, which was denied. The Board did rule "that Carrier give some guidance to its crew dispatchers in this regard, and take appropriate remedial action when similar occurrences arise. Carrier, in this case, avers it counseled the crew dispatcher." 12/8/94

PLB* 5323 - *Award No. 79

FACTS:
"On the date of claim, Claimant was regularly assigned to yard assignment AYL-1, coming on duty at Los Angeles at 6:05 am. Claimant reported for his assignment, and continued to work it until 8:05 am, at which time he was instructed to perform service as a Passenger Conductor on Train 572 from Los Angeles to San Diego and return on Train 581."

DECISION:
It appears to this Board that the Organization's claim is grounded upon its assertion that Claimant was not the appropriate employee to use for service on Trains 572 and 581 pursuant to Rule 13(b). That may well be true. The Rule sets out an order by which the Carrier is to utilize employees when there is a day-to-day vacancy for a Conductor. None of those steps includes an employee in Claimants classification. Carrier would be privileged to reach Claimant for this vacancy only if there were no employees to be called using the procedures set forth in Rule 13(b). There is, however, no evidence that there were rested and available employees in any of the classifications set forth in the Rule. Even if there were, it would be that employee who would be the proper claimant in such a case.

The Rule, the way it is written, appears to establish an employee's right to work a job rather than establish the right not to. Thus, it would be the employee who was improperly denied the opportunity to work the vacancy who would have standing to file the claim. **DISMISSED**

NOTE: Also see Award No. 80 of PLB 5323 12/18/95

***PLB* 5223 - *Award No.* 18 - SUSTAINS** the claim of a regular assigned employee for time and one-half for working the second-leg of an assignment that began (first leg) on his rest day. The return portion (second leg) went to work on a day he was scheduled to work on his regular assignment out of his home crew base. The decision is also significant in regard to establishing that both segments of a straight-away run constitutes one assignment. 12/18/95

***PLB-5223 - Award No.* 17** - Regular assigned employee ordered to double the road, is released prior to actually starting the second assignment. Claim **SUSTAINED** for four (4) hours under Rule 17(a) with a vigorous dissent from the Carrier. 12/18/95

OC-UTU-SD-514 - Time and one-half initially denied under Rule 17(c) on the basis it was a socalled "hours of service day", not "a day on which the claimant was not scheduled to work." System Labor Relations sustained the claim for the time and one-half rate. March 99

OC-UTU-SD-685 - An attempt was made, without success, to notify the Claimant on her rest day, that she had been displaced. She reported for work on her first day back (September 27, 2000) following her rest days, at her on-duty work location, Lowell, at 5:15 AM, Run 331, and worked the first train of her assignment, Train #302, into Boston. It was only after she arrived in Boston that she was made aware of the fact that she had been displaced by J. 201a. The employee who made the displacement, J. 201a, had car trouble, which precluded her from reporting a Lowell, at 5:15 AM, to work Train No. 302, from Lowell to Boston. The Claimant filed for the earnings of her assignment (AWLO-1), which was **sustained.** At the local level the Claimant had only been allowed time consumed working Train #331, i.e., 1 hour and 50 minutes.

PLB 6312 - Award No. 27 - This involved an employee working in yard service that was told he was needed to work on the road, however these instructions were subsequently cancelled before he took up service on the road train. Sustained for four (4) hours under Rule 17 (a).

NOTE: *This is the second such case that was sustained, i.e., also see PLB* 5223 - *Award No.* 17.

PLB 6312 - Award No. 198 - **DENIED** our claim under Rule 17(b) for doubling-out in yard service for lack of evidence in the record that an emergency existed. *6/23/05*

OC-UTU-SD-942 - (A. C. Milazzo) Sustained for the time and one-half rate for working a second assignment in an emergency situation. Rule 17(b}. **5/28/04**

NOTE: A brief was prepared in this case, should we need it in the future.

PLB 6312, Award No. 118 - This case involves a claim for the time and one-half rate for working on an off-day {Rule 17(c)}, from the away-tram -home crew base to the home crew base of the assignment. The arrival time at the away-tram-home crew base was too late to work back on the day the assignment was advertised to work. Therefore, the Claimant worked the return leg the following day, which was an off day for the assignment. PLB 6312 denied the claim for the time and one-half rate. *5/28/04*

OC-UTU-SD-2203 & 2204, P. J. Zolper – Extra board employee called out on short rest. Paid at the overtime rate (Rule 17b). Brief prepared if needed.

PLB 6312, Award No. 64 - Claimant used a second time on the day involved in an emergency situation, paid at the time and one-half rate pursuant to Rule 17(b). **5/28/04**

PLB 6312 – Award No. 201 – Assignment annulled during the same workweek the Claimant worked an off day. **Denied** time and one-half under Rule 17(c). 6/23/05

OC-UTU-SD-1484 – **SUSTAINED** for the time and one-half rate for working an off-day, pursuant to Rule 17(c). **5/28/04**

OC-UTU-SD-906 - Claimant G. G. Grann – Claimant was paid at the time and one-half rate, pursuant to Rule 17(c) for working a day the Carrier first classified as an Hours of Service Day. Also see OC-UTU-SD-1173, 1271, and 1422. **5/28/04**

PLB 6312, Award No. 119 – This case involves notification of displacement, i.e., Rule 17 (a)(2). Two (2) attempts were made in the AM to notify the Claimant, the second of which included a message being left that the Claimant had been displaced. The Claimant reported at her normal on duty time, which was 10:00PM, and she was not allowed to work. Therefore, she claimed lost earnings. PLB 6312 **Denied** the claim. Also see PLB 6312, Award No. 236. **5/28/04**

PLB 6312 – Award No. 243 – **SUSTAINED** a claim for the time and one half rate under Rule 17(c). There are various aspects of this case that are important in the future as follows:

1) The Claimant worked through his home crew base on the same train with his first time claim ending and a new day beginning at his home crew base.

2) Rule 17(c) applied because it was an off-day. This will help defeat the Carrier's hours of service day denials.

3) It labeled the Carrier's assertion that Claimant had not worked all the hours of his regular assignment as an affirmative defense. Accordingly, the Carrier had the burden to provide evidence to support their assertion, which they failed to do.

Public Law Board No. 6312, Award No. 321 – Denied a claim from an Assistant Conductor for a separate start pursuant to Rule 17(b) at the time and one-half rate for being required to perform service beyond the normal relieving point of the train due to a short crew on the relieving train. The Board ruled as follows:

> "It is evident to the Board that no "emergency" existed when it came to Claimant's service from Toledo to Chicago. The Board agrees with the reasoning set forth in Award No. 42 of Public Law Board No. 4874 that a "manpower shortage" does not amount to an "emergency." The Board is not persuaded by the Organization's argument that an "emergency" was avoided by the Carrier because Claimant was utilized for service from Toledo to Chicago. As the Carrier observes, the utilization of only a Conductor would not have been an "emergency," though it would have been a violation of the crew consist agreement under Rule 11. No emergency was therefore avoided by the Carrier's utilization of Claimant, and, under Rule 2, Claimant was properly compensated."

RULE 18 - CUTOFF ENROUTE

OC-UTU-SD-192 - Crew Cut-off enroute at a point where there was no food from midnight to the crew's on duty time of 3:30 AM. Claim **SUSTAINED** for a one (1) day's pay, minus one (1) hour, which the crew was overpaid on the service timecard.

PLB 5323 - Award No. 51 - Claim **SUSTAINED** for eight (8) hours that was submitted by an Employee in straight-away service cut-off short of his assigned away-from-home crew base, and put in for rest. The Claimant could have completed the trip to the away-from-home crew base within the laws limiting his hours on duty, therefore, the Board ruled the Carrier violated Rule 18 paragraph (A). 12/8/94

OC-UTU-SD-1534 - Claimant, R. L. Dugan – Paid eight (8) hours for being cut-off enroute in violation of Rule 18 (a). Brief prepared if needed in a future case. 6/23/05

RULE 19 – EXPENSES AWAY FROM HOME

OC-UTU-SD-991 - Lodging provided at a distant city. Paid time consumed to the distant city, service and deadheading combined. **5/28/04**

OC-UTU-SD-2077 - Claimant released from duty for four (4) hours and 30 minutes and not provided lodging. Paid eight (8) hours for the Carrier's violation of Rule 19 (A). Brief prepared if needed in the future.

PLB 6312, Award No. 269 – Sustained a claim for eight (8) hours for waiting more than thirty (30) minutes after going off duty for a room at the away-from-home rest facility.

RULE 20 - TRAINING, QUALIFYING AND EXAMINATIONS

PLB 4874 - Award No. 33 - Provides insight in dealing with a case that involves a failure to pass a Book of Rules Class.

PLB 3516 - Award No. 84 - Payment for a second Book of Rules class in a calendar year. **DENIED**.

PLB 5223 - Award No. 10 - The issue here involved a training class at the end of a tour of duty as to proper payment i.e. continuous time under **Rule 2** or a separate day under **Rule 20**. Board's decision was that Rule 2 was controlling. 11/4/94

PLB 6312, Award No. 246 – Employee that signs a waiver in connection with a discipline matter that includes attending an Operation Performance Review is not entitled to be compensated for his attendance in e with Rule 20. 2/21/07

PLB - 5323 - Award No. 68 - Rule 20 makes it clear that there is no requirement that Carrier pay Claimant for qualifying when she attempted to exercise her seniority to a Conductor position for which she was not qualified. Rule 9 provides that Carrier is not obligated to place an unqualified employee on the position. The effect of these two Rules, though, is that Claimant did effectively displace onto the position, but she was not entitled to actually take up service on the position until she became qualified. The wording of the above-quoted portion of Rule 9 makes it clear that there is a distinction between displacing onto a position, which is accomplished through the exercise of seniority, and taking up service on the position, which can only be done after the employee is qualified. 12/18/95

PLB-5223 - Award No. 15 - Claimants ordered to remain in service beyond their advertised away from home crew base to qualify in anticipation of readvertising their assignment to include the territory beyond their away from home crew base. Claim **SUSTAINED** for eight (8) hours under Rule 20, rather than continuous time under Rule 2. 12/18/95

PLB-5323 - Award No. 66 - Claimant ordered for Customer Service Enhancement on short notice to Chicago from Portland, marks-off because of insufficient time to arrange for his departure and stay in Chicago. Subsequently, he attempted to mark-up, and is withheld from performing service. According to the Transportation Manager, if claimant was too sick to go to Chicago, he was too sick to work his assignment. We based our case on the fact that the entire episode was caused by the improper handling of the matter as to what should transpire before a person attends Customer Service Enhancement, Le. advice in regard to the letters of complaint, an opportunity to respond, sufficient notice in advance of attending class, etc. The Referee ignored our arguments and **DENIED** the claim because the claimant had marked-off sick when he was notified he was required to go to Chicago. 12/18/95

OC-UTU-SD-332 - STATEMENT OF FACTS: - The Claimant, R. M. Lesley, was a member of the Pendleton extra list on November 20, 1994 and he stood for assignment CHT -4. However, he was held off the board unable to cover CHT~4 because he had to be available to attend Training Classes on November 21 and 22, 1994. He was paid 8 hours for November 21 and 8 hours for November 22, 1994. He claimed 8 hours for November 20, 1994, which was denied and is the subject of the dispute in the instant case.

S. D. Bazzini stood behind the Claimant on the Pendleton extra board on November 20, 1994, and he covered CHT-4 earning 10 hours and 17 minutes for the first leg of the trip. He took rest at the away from home crew base and worked the return leg on November 21, 1994 earning 11 hours and 2 minutes.

NOTE: Our research was unable to discover any earnings for Bazzini on November 22, 1994 which may indicate he laid-in. In any event, it will not matter inasmuch as our position is limited to what transpired on November 20 and 21, 1994.

EMPLOYEES' POSITION: Rule 20 requires that the Claimant be made "Whole" for November 20 and 21, 1994, inasmuch as he would have earned 10 hours and 17 minutes for 11/20/94 and 11 hours and 2 minutes for 11/21/94 had he not attended class on 11/21/94.

It appears that for some reason the Claimant only applied for an eight (8) hour day for each date.

We can only collect what he claimed. He was paid for November 21, 1994. The best we can do is collect what he claimed for November 20, 1994, i.e., 8 hours.

In a letter dated February 22, 1996 the Carrier advised as follows:

> "The above case, involving the claimant's request for payment of 8 hours for November 20, 1994, for ' ... held off Board to attend rules class on 11/21/94', was discussed on November 28,1995.
>
> "Due to the particular facts and circumstances surrounding this case, the claimant will be allowed payment of 8 hours in full and final settlement of this case." 12/20/96

PLB-5323 - Award No. 78 - Claims for eight (8) hours for completing a "Home Study Course" were **SUSTAINED.** 12/20/96

PLB-6189 - Award No.7 - Book of Rules class immediately following service. Carrier paid continuous time under Rule 2, for the service and attendance at the Book of Rules Class. We claimed a separate day for the Book of Rules Class under Rule 20. Our Claim was **DENIED.**
March 99

PLB 6312 - Award No. 24 - Held time pay **denied** when attending training class at other than the employee's Home Crew Base.

PLB 5953 - Case No. 16 – Claimant qualified between Toledo and Chicago in connection with a change in the operation of Trains 48/49 i.e., the Chicago crew runs through Toledo to Cleveland. Previously, a crew out of Toledo worked these trains between Toledo and Cleveland. That made Toledo the in between point (Chicago/Cleveland) for relief crews protecting service in both directions. Accordingly, Claimant qualified to Chicago to protect the service, he being based at Toledo (Detroit crew base). The Carrier paid Chicago employees for qualifying

between Toledo and Cleveland under Rule 20 (c). The UTU argued the same payment was due to the Claimant, however the Board **denied** our claim.

PLB 6312 – Award No. 6 – Claimant required to attend a training class on a rest day. He claimed eight (8) hours on the basis the Carrier violated the Agreement when they unilaterally cancelled his rest day by requiring him to attend class. **Claim denied.** 11/16/01

PLB 6312 – Award No. 40 – Time allowed pursuant to Rule 20 (c) is subject to the 30 day time limit in Rule 24 (a).

PLB 6312 - Award No. 97 – See page 5 for the following:

> "Thus, there is no evidence that the Carrier has regularly provided free transportation, food, and lodging to employees who seek re-certification at a distant site when the employee is voluntarily exercising seniority." **5/28/04**

PLB 6312 - Award No. 165 – Employees that accept payment for qualifying to work on a Conductor's list that are displaced before working the list for six (6) months, cannot be forced back onto the list at a latter date to complete their six (6) month obligation i.e., the obligation ends when they are displaced. **5/28/04**

PLB 6478, Award No. 68 – NORAC Rules Class not readily available for an employee that exercised seniority from off-corridor to on-corridor. Claim for lost earnings **DENIED. 5/28/04**

OC-UTU-SD-886 – Claimant C. L. Swihart – Claimant allowed two (2) hours and fifty (50) minutes time consumed traveling from Chicago to Waterloo, pursuant to Rule 20(e), after being allowed eight (8) hours time consumed pursuant to Rule 20(b) for attending class in Chicago. His home-crew base was Waterloo, and it was his rest day. (Brief prepared) **5/28/04**

PLB 6312 – Award No. 107 & Award No. 114 – **DENIED** travel time pursuant to Rule 20(e) on a scheduled workday. 6/23/05

PLB 6312 – Award No. 222 – Claim **SUSTAINED** for eight (8) hours for reviewing material and completing at test during off duty hours. 1/9/07

NEC-UTU-SD-601 – SUSTAINED a claim for three (3) days pay for qualifying to Glenn Mills pursuant to Rule 20(c). Brief prepared if needed in the future. 1/24/07

OC-UTU-SD-2035 – SUSTAINED for eight (8) hours for completing a home study course. Rule 20(b). Brief prepared if needed in the future. 1/24/07

PLB 6312, Award No. 284 – Displacement denied pending training on other than the physical characteristics of the railroad is deemed a violation of Rule 20(B) in that the Claimant should have been allowed the earnings of the assignment while in training.

PLB 6312, Award No. 290 – In class on a so-called hours of service day. Denied.

PLB 6312, Award No. 258 – Training at home on the CSX Book of Rules was denied.

RULE 22 - BEREAVEMENT LEAVE

OC-UTU-SD-41 – Bereavement Leave for a day held time was paid at the away from home crew base. (**SUSTAINED**) Also see *OC-UTU-SD-386*, which was also **SUSTAINED**. 12/18/97

RULE 24 - TIME LIMIT AND PROCEDURES FOR HANDLING CLAIMS

OC-UTU-SD-351 - Compensation claimed was paid because the Carrier failed to issue a denial within 60 days. Rule 24(E) 12/20/96

PLB 6312 – Award No. 40 – Time allowed pursuant to Rule 20 (c) is subject to the 30 day time limit in Rule 24 (a).

PLB 6189 – Award No. 15 – *See Award for the following:* "Rule 24 a. requires a claim to be filed '. . . not later than 30 days from the *date of the occurrence* on which the claim is based'. (Italics supplied) While a long –standing past practice may well cause the Claim to be rejected, that defense goes to the merits of the Claim and not its procedural timeliness. The date of the occurrence on which the instant Claim is based was September 23, 1997; nothing in the record establishes that the Claim was filed more than thirty days from that date. On this record, therefore, the Claim is found to be timely." 6/18/02

PLB 6312, Award No. 165 - Rejected the Carrier1s argument that the claims should be dismissed because they were not signed and dated by an officer of the Corporation, pursuant to Rule 24(a). 5/28/04

***PLB* 6312 - *Award No.* 186** - Rule 24(e) does not preclude the Carrier from recovering the $9.00 Long Haul Allowance paid in error. 6/23/05

PLB* 6312 - *Award No. 220 - Initial claim filed within the time limits and not progressed because it was not receipted by an officer of the Corporation. Claim resubmitted but after the 30 day time limit in Rule 24(a)~, The Board denied the claim on the basis the initial claim was not appealed, and the duplicate claim was not filled within thirty (30) days as required by Rule 24(a) . 6/23/05

PLB 6462, Award No. 22 and Award No. 30 - Requesting information to verify a time claim for a contract violation. Filed in Rule 24 - On-Corridor Amtrak. 5/28/04

***PLB* 6312 - *Award No.* 241 - SUSTAINED** the claim without addressing the merits based on the Carrier's violation of the 60 day time limit in Rule 24(e). Good case to refer to in regard to an interpretation of Rule 24(e). Award reads in part pertinent:

> "Those awards cited by the Carrier claiming that it need not issue a denial within 60 days if the claim is void ab initio concern instances where the claim itself was not presented in conformity with the contractual standards and not, as argued by the Carrier in this case, that the claim was lacking in merit." 1/9/07

***PLB* 6312 - *Award No.* 183** - $1,649.67 paid for trauma leave before there was an agreement. Six months later it was denied and then recovered. We claimed it was payable under Rule 24(e),. i.e., the claims were not denied within 60 days, therefore, Rule 24(e) required they be paid without addressing the merits. The Board denied our appeal on the basis the original claims were not part

of the record as having been submitted under Rule 24(a). 1/9/07

PLB 6312, Award No. 282 – A Claim submitted under Rule 24 that paralleled a discipline case under appeal in accordance with Rule 25 is considered a "duplicate claim" therefore "procedurally defective," thus Rule 24(E) does not apply.

RULE 25 - DISCIPLINE

***PLB* 4874 - *Award No.* 41** - "Failure to timely remit revenue ... violation of revenue policy ... "Carrier had an apparent knowledge of the claimant not having remitted revenue for ticket stock which was outstanding while at the same time issuing the claimant new or additional ticket stock on several occasions during the period in question. Good Case to refer to when handling cases of this nature. Claim **SUSTAINED.**

PLB 6877 – Award No. 110 – Engineer passed stop signal and backed-up on his own. Conductor dismissed, but reinstated, exonerated of all charges, and made "Whole" for lost earnings.

***PLB* 3516 - *Award No.* 37** - *Involves* spotters and revenue collection not remitted and remitted late. Good case to refer to for time limits, Carrier first knowledge, etc. **(SUSTAINED** without back pay). Favorable award in connection with failing to schedule trial within time limits while investigating revenue procedures and remittance. Also see PLB 5101 - Award No. 20 for the same type case where the employee was paid all back wages.

***PLB* 3516 - *Award No.* 12** - Spotter claims she gave the claimant $13.50 and he did not issue her a receipt. Spotter's testimony was wrong regarding train times. **(SUSTAINED)**

***PLB* 3516 - *Award No.* 44** - Dismissal for failing to assist handicapped passenger, and departing the station while two visitors that were helping the passenger were still on the train. One jumped off while the train was leaving the station, and the other was carried to the next station. **Reinstated without back pay.**

***PLB* 5323· *Award No.* 34 - SUSTAINED** - ticket lift - Safety first - acted properly. 11/4/94

***PLB 5101* - *Award No.* 19- SUSTAINED -** Establishes that the Conductor is in charge of the Train. 11/4/94

***PLB* 5223 - *Award No.* 24 - SUSTAINED** - Involved a passenger complaint wherein the passenger failed to make a positive identification. Amtrak allowed telephone testimony. 12/20/96

***PLB* 5323 - *Award No.* 84 - SUSTAINED** - Establishes that Amtrak cannot support discipline based on actions toward other employees, outside the scope of the charges. 12/20/96

***PLB* 5323 - *Award No.* 92 - SUSTAINED** - Once again establishes when an individual with a remittance problem comes forward to rectify the situation, prior to Amtrak charging them, there is a better chance of saving their job. *12/20/96*

***NEC-UTU-SD-270* -** The Claimant was robbed at gunpoint of his Amtrak issued radio, as well as personal belongings, estimated value $1, 132. He was required to reimburse Amtrak in the amount of $595.00 for the loss of the radio, on the premise he was negligent when he left the train station in Newark, thereby placing himself in jeopardy of being robed. Amtrak paid the Claimant back the $595.00. 12/20/96

PLB 5323 - Award No. 96 - **SUSTAINED** - Establishes the importance of an individual found guilty of Rule "G" having a successful recovery program in place, prior to attending a Public Law Board. 12/20/96

OC-UTU-SD-327 **- SUSTAINED** in favor of an employee held out of service improperly in connection with a drug case. 12/18/95

NEC-UTU-SD-278 **–** Claimant reimbursed in the amount of $138.00 toward depreciation of a radio he was required to pay for at full value, which amounted to $595.00. 12/20/96

OC-UTU-SD-274 **–** Claimant apparently had an off-duty employee removed from the train by the police. The Carrier requested a statement and she advised the Carrier her attorney would handle the matter. The Carrier responded by withholding her from service for two (2) days until she submitted the statement, after which she was returned to service. She claimed the earnings lost as a result thereof. **SUSTAINED.** 12/20/96

PLB 5323 – Award No. 70 **–** Claim for continuous time for travel to and from a trial at another Crew Base **DENIED**. Claimant was a Company witness (See dissent of labor) Also it should be noted that this decision would not apply in Zone 1 and 2 because of a side letter that pays for travel time under such circumstances. 12/20/96

OC-UTU-SD-518 – F. Fanion – Carrier delayed in returning Claimant to service, after he served a suspension, by postponing his return to duty physical, after a different Carrier officer had scheduled it. **(SUSTAINED)**

SBA 960 – Award No. 383 **–** See the following language:

> "While this Board has no problem adopting the 'captain of the ship' theory when the Conductor is aware of the rule violations, we will not apply it when he neither knew nor could have known of the violations. Simply by virtue of being the Conductor, Claimant should not be subject to discipline for all improper actions taken by employees under his direction. When a subordinate employee chooses to violate the

rules without the knowledge or approval of the supervisor, he should not be permitted to 'take the supervisor down' with him. For the first three actions, this was not a failure of Claimant to supervise. He could not have known the rules were being violated."

NEC-UTU-SD-400 – Claimant J. G. Turner, Claimant waived his right to trial and accepted a three (3) day suspension. He was held out of service for four (4) days pending results of a drug test. He was paid eight (8) hours for each day (32 hours total) based on our argument that the discipline was deferred pursuant to Rule 25(k) and awaiting the drug test results cannot, in and of itself, cause the Claimant to lose time. (Brief prepared). **5/28/04**

PLB 6312 – Award No. 238 – See the award for the following:

"There is no language in Rule 25, the Board finds, that prohibits the Carrier from asking an employee questions as part of an investigation, even where, as here, the employee provided a written statement. The Board concurs with the Carrier that any other interpretation of Rule 25 would substantially compromise the Carrier's ability to conduct investigations. The Board also notes that no claim has been made in the instant case that the Claimant was required to answer questions after he sought Union representation. This Award should not be interpreted, therefore, as in any way diminishing an employee's right, when appropriate, to obtain Union representation before being questioned." 1/09/07

PLB 6312 – Award No. 7 – This is a denial award that files in the face of Rule 25. See our dissent. 1/9/07

PLB 6312, Award No. 282 – A Claim submitted under Rule 24 that paralleled a discipline case under appeal in accordance with Rule 25 is considered a "duplicate claim" therefore "procedurally defective," thus Rule 24(E) does not apply.

RULE 26 - LEAVE OF ABSENCE

OC-UTU-SD-169 - **SUSTAINED**. Carrier allowed an engine service employee that was not furloughed to return to train service, which is contrary to our Agreement.

PLB 5117 - Award No. 1 - Carrier cannot grant a leave of absence under Rule 26(e) if the UTU does not agree. File AN-326 and AF-326.

PLB 3516 - Award No. 70 - found that Rule 26 is controlling over Rule 25 in instances where an employee absences himself without proper leave. See that portion of the Award that reads:

> "In keeping with this body of opinion, we find this rule to be self-executing and not coming under the hearing procedure requirements of the discipline trial provisions (Rule 25 here).
>
> "In view of that, Carrier is under a particular obligation to see to it that the conditions requisite to the rule are, in fact, present before applying its consequences and appeal tribunals such as ours must be ready to (sic) beyond their traditional function of reviewing a previous trial decision and act, instead, as a receiver and evaluator of evidence concerning any factual conflicts on whether the requisites for its stated consequences were present.
>
> "We have made such examination and evaluation here. We conclude that Carrier was justified in regarding claimant as having unauthorizedly absented himself over the long period charged without communication or explanation during said period and then when given explicit opportunity to do so. Nor has there been a showing that during either his absence or his silence thereon were compelled on him by circumstances beyond his control or deserving extenuating influence.
>
> "Accordingly, **Carrier's action will be upheld**." 11/4/94

RULE 28 - APPROVAL OF APPLICATION

SBA 1020 - Award No. 6 - *Filed in Rule 28 On & Off-Corridor.* Application approved or disapproved within 90 calendar days after applicants begin work. ***The term, "begins work", means actual service not training time.***

PLB 6189 – Award No. 54 - Provides insight in regard to an employee terminated during the probationary period. 1/24/07

RULE 29 - PHYSICAL REEXAMINATION

OC-UTU-SD-139 - The Claimant took a physical on January 4, 1991. Following completion of training he attempted to mark-up on January 19, 1991 and was informed he failed his physical. Claimant then was made to take another physical on January 25, 1991 and he was approved for service on February 6, 1991. Claimant lost earnings from January 19 to February 6, 1991. Case settled for two weeks guarantee.

PLB-5323 - Award No. 60 - Claimant withheld from service for medical reasons claims lost time on the basis he was medically capable of performing service. Claimant advised a supervisor he was being treated by a cardiologist, which resulted with the claimant being removed from service until his doctor approved him for service. Claim **DENIED.** 12/18/95

PLB-5223 - Award No. 16 - Insight into holding employees out of service for medical reasons. 12/18/95

PLB-5323 - Award No. 56 - withheld from service pending the results of a drug test administered in connection with a return to duty physical examination. 12/18/95

PLB 4874 - Award No. 19 - Employee withheld from service pending the results of a drug test is paid for time lost. 12/20/96

PLB-5323 - Award No. 106 - *See pertinent language as follows*:

> The Carrier has a duty to return an employee to work as soon as practical once it has determined he is medically qualified. When an employee has been absent for a lengthy period of time for an injury, as was Claimant, the Carrier may require more detailed information than a note from the employee's doctor saying he may return to work. In this case, the March 15, 1994 report, which was transmitted to the Claim's Department on March 23, 1994, would satisfy that requirement. This date, therefore, would be the earliest time Claimant could have been considered qualified.
>
> Just as the Carrier has an obligation to bring the employee back to work, so has the employee an obligation to ensure that the proper papers are in the proper hands. Furthermore, when Claimant saw he was not coming back to work promptly, he should have made inquiry as to why his return was being delayed. The employee cannot simply sit back and wait to be called. He must take steps to mitigate his damages.
>
> The Board finds Claimant was withheld from service for an excessive period of time. We find this period to run from March 23, 1994, the date on which Claimant's attorney first sent the complete medical report to the Claim's Department, until December 28, 1994, the date on which he sent the report to the Medical Department. During that time, the Claim's Department should have been in communication with the Medical Department to ensure it had received the report. As noted above, Claimant also should have taken action to get back to work. Accordingly, we find that Carrier and Claimant must share the responsibility, and we will award Claimant one-half of the earnings he would have made had he worked between March 23, 1994, and December 28, 1994.

AWARD: **SUSTAINED** in accordance with the above Findings. Carrier is directed to comply with this Award within forty-five days. 12/18/97

PLB 5023 - Award No.1 - Red Green color vision deficiency. X-chron lens. *See Rule 29 Amtrak. 12/4/01*

PLB 530 - Award No.6- *Blind* in one-eye. **Denied** reinstatement. 12/4/01

OC-UTU-SD-518 - F. Fanion - Carrier delayed in returning Claimant to service, after he served a suspension, by postponing his return to duty physical, after a different Carrier officer had scheduled it. **(SUSTAINED)** 12/4/01

MEDICAL DISQUALIFICATION AWARDS

- Public Law Board No. 4591, Award No.4
- Public Law Board No. 2968, Award No. 1
- Special Board of Adjustment No. 955, Award No. 63
- Special Adjustment Board No. 18, Decision No. 5946, Case No. 1446
- Public Law Board No. 4591, Award No.3
- Public Law Board No. 2639, Award No.2
- Public Law Board No. 2882, Case No. 10
- Public Law Board No. 1711, Corrected Award No.2
- Public Law Board No. 912, Award No. 537, Case No. 550

NOTE: All Awards are filed in Rule 29, Amtrak - Off Corridor

PLB 6312 - Award No. 202 - Carrier refused to a grant a medical examination after the Claimant was off from work for more than six (6) years as a result of an on-duty injury. Board upheld the Carrier's action based on Rule 29(c), i.e., the report of the Claimant's physician did not indicate a change in his medical condition; therefore, the Carrier could refuse the Claimant a reexamination. 6/23/05

PLB 6312 - Award No. 163 - Involves the medical department delaying the Claimant's return to service following a heart problem. **Denied. 5/28/04**

PLB 6478 - Award No. 67 - EAP Counselor cleared the Claimant to return to work, which was later denied by the medical department without an examination. Claim for lost earnings, **Denied.** 5/28/04

NEC-UTU-SD-399 **-** Claimant, J. G. Turner - The Carrier approved the Claimant for service following his physical on January 10, 2001. The Carrier removed the Claimant from service effective February 11, 2001, for what they claim was medical reasons. There was no follow-up examination by the Carrier after the examination on January 10, 2001. The only examination the Claimant received after January 10, 2001, was by his personal physician who apparently found nothing wrong with him, because he immediately approved the Claimant for service, which the Carrier accepted without question. Accordingly, the question this case presents is, what was wrong with the Claimant between February 11, 2001 through February 21, 2001, that precluded him from performing service. The Carrier agreed to allow the Claimant eight (8) hours per day for each of the nine (9) days he lost. 5/28/04

Supreme Court of the United States - Gunther vs. San Diego & Arizona Eastern Railway Company: Enforced First Division Award No. 17646 - Medical panel determines whether or not an employee is physically able to work.

PLB **6312 -** ***Award No.*** **41 -** Medical evidence introduced at trial that clears the Claimant of the charges cannot be used to withhold payment for lost time in connection therewith. 5/28/04

PLB 6312 - Award No. 239

"OPINION OF THE BOARD

"The Board concurs with the Carrier that Rule 29 is not applicable to a resolution of the instant case. For Rule 29 to be triggered, the employee involved must be in-service, with said employee disputing a medical disqualification following an examination under Rule 29. Claimant was not in-service no was she medically disqualified from service following any physical examination. Each contract, however, carriers with it an implied duty of good faith and reasonableness, and, as to the instant case, the Carrier therefore had the contractual burden to not act unreasonably in delaying Claimant's return to work after learning from Claimant in July, 2004 that she wished to return to work. It is noted that Claimant's desire to return to work came after approximately a two and a half year period during which time, the record indicates, Claimant had not updated the Carrier concerning her physical condition. It can also be noted that the Carrier's obligation to return an employee to work within a reasonable period of time carriers with it the right to make reasonable requests for information in order to make a determination whether an employee is fit to return to duty.

In discharging its obligation to not unreasonably delay a return to work, the Carrier, the Board finds, is under no duty to initiate any and all direct inquires with an employee's treating medical professionals to resolve all questions created by incomplete, confusing, or contradictory information the employee has supplied or the treating medical professionals have supplied." 1/10/07

PLB 6312 – Award Nos. 229, 230, 231, 232, and 234 – Claims denied for time lost awaiting the results of a drug test administered as part of a return to duty physical examination. 1/10/07

RULE 30 - LOCKER FACILITIES

PLB-3985 - Award No. 99

"The instant claims are with support under the mandatory requirements of the Caboose Pooling Agreement dated April 3, 1959 which became effective April 15, 1959. The Agreement has not been changed or amended concerning the specific requirements relative to suitable lockers, sanitary toilet washroom facilities, etc.

"The payment of a day's pay is proper for the violation of the rule not as a penalty, but compensatory damages which will deter the Carrier from complete disregard to its obligation. In the instant case, the Carrier has deprived Claimants of their rights under the contract rule and thus a literal noncompliance with the express terms of the contract warrants the payment under the minimum day rule. Therefore we must sustain the claim."

Filed in Rule 30 Amtrak On and Off Corridor. 12/18/95

NEC-UTU-SD-272 - Claim for women employees at Race St. required to use the Women's bathroom in 30th Street Station SUSTAINED for two (2) hours for each occurrence. 12/20/96

PLB-5323 - AWARD 107 - Involved a claim for a day's pay for not having a locker and toilet facilities at the on and off duty point of an assignment. The claimants did have a locker at another location within the crew base limits where toilet and lavatory facilities were also available. Board ruled this was sufficient to satisfy the requirements of the rule. 12/18/97

First Division Award No. 25975 – Locker size.

PLB 6312, Award No. 263 – Denied.

RULE 32 - VACATION

PLB 416 - Award No. 6 - The Claimant was allowed to take vacation when he was not entitled to same. Claim **SUSTAINED** on the basis the claimant was not advised of his rights, and it was further alleged by the Organization that the Carrier advised the Claimant that he could have three weeks vacation. See Interpretation attached to the Award.

NEC-UTU-SD-194 - The Claimant was assigned vacation but did not qualify for same. Claimant took the vacation and was denied payment. Director of Labor Relations **SUSTAINED** the claim.

OC-UTU-SD-290 - A case where the employee was not entitled to two (2) weeks vacation. He was assigned the two (2) weeks and denied payment when he submitted the vacation timecard. We argued the case before PLB-5323 (Simon) on 6/16/95 during which Simon indicated a compromise was in order, and for the parties to work out the details. Thereafter we met with the Carrier, and it was agreed to split the case in half, i.e. one (1) week paid vacation. Although the settlement was without precedent, and cannot be referred to by either party in the resolution of future similar cases, it does serve to provide insight in regard to

how such cases are viewed by the Board. The opinions expressed by the Neutral were to the effect that both parties failed in their responsibilities, i.e. (1) the claimant knew or should have known he was not entitled to vacation, therefore he should have so advised the Carrier, and (2) the Carrier should have known he was not entitled to vacation, therefore none should have been assigned. *Also see NEC-UTU-SD-300, L. H. Murphy* 12/18/95

NEC-UTU-SD-340 – Claimant K. O'Connell – **Sustained** for a second week of vacation. Claimant's seniority date is August 19, 1997. Calendar Year 1999 was an anniversary year for the Claimant for two (2) weeks of vacation. 1999 being Claimant's anniversary year for purposes of qualifying for two (2) weeks of vacation, made January 1, 1999, his anniversary date, as provided for in the Letter of Agreement dated January 24, 1997.

PLB 6189 – Award No. 21 - The Letter of Agreement dated July 3, 1996, applies unconditionally to all those employees with previous experience in train service with another Carrier.

By letter dated January 25, 2001, the Carrier abrogated the Letter of Agreement dated July 3, 1996. Accordingly, the Letter of Agreement dated July 3, 1996, applies only to those employees hired on or after July 3, 1996, and before February 15, 2001.

PLB 6424 – Award No. 1 – Service rendered as a member of a Safety Committee is considered time worked for purposes of qualifying for vacation in the following year.

PLB 6312, Award No. 260 – An employee on a straight away assignment has to take a single vacation day for each of the two (2) work days he/she was off.

RULE 33 – HEALTH AND WELFARE BENEFITS

PLB 6189 - Award No. 33 – Reinstatement includes reimbursement for premium payments for Health and Welfare coverage**. 5/28/04**

RULE 36 – MEAL PERIOD

PLB 6312- Award No. 199 – Claim for 20 minutes for a late lunch **SUSTAINED.** 6/23/05

RULE 38 - SELF-PROPELLED MACHINES

PLB 3516 - Award No. 30 - Speno rail grinding train operated without a conductor. **DENIED** Organization failed to show Special Train operating under train orders as opposed to carrier's contention that the train was operating under Form M.

PLB 6312 – Award No. 226 – Brandt Power Unit case was **DENIED.** 1/10/07

PLB 6312 – Award No. 276 – Added 7/28/08

RULE 40 - HOLIDAYS

PLB 6312 – Award No. 11 – Half time pay (Commuter Service) does count towards the eight (8) hour time and one-half earnings minimum for service performed on a holiday.

First Division Award No. 23198 - Time and one-half for working on a holiday (regular assignment) was denied by the Carrier on the basis the Claimant did not perform service on the day immediately after the holiday because of jury duty. The First Division **SUSTAINED** the claim for time and one-half.

RULE 43 - PORTABLE RADIOS

PLB 4874 - Award No. 43 - Insight into an employees' responsibility in providing for the safekeeping of a radio.

PLB-5323 - Award No. 67 - Claimants required to complete insurance forms regarding a claim against their home owners policy for radios that were turned back to the Carrier for safe-keeping in the office of the Transportation Manager which was broken into and the radios stolen. Although the Board agreed "that Carrier did something that does not make sense" meaning it was improper to have claimants file for reimbursement from their homeowners policy, it **DENIED** the claim for compensation for completing the forms. The Board ruled in part here pertinent as follows:

> "Even though the radio is owned by the Carrier, it certainly would not be inappropriate to have the employee file a claim with his insurer when a radio is stolen from his house or car.
>
> "In this case, the Board cannot understand why it would have claimants file the insurance claims. Although the Carrier has suggested that claimants should not have left the entire radio in the office (they were left to charge the batteries), it has not taken any disciplinary action against them. The fact that Carrier did something that does not make sense, however, does not subject it to liability for additional pay. There should be other avenues available to claimants when they feel they have been treated inappropriately. The penalty claim, at least in this instance, is not an appropriate remedy." 12/18/95

PLB 5953 – Case No. 21 - Providing for the safekeeping of a portable radio, batteries, and battery charger during off-duty hours, and the maintaining and charging of the radio batteries during off-duty hours. **Denied.** 12/10/01

NEC-UTU-SD-270 - The Claimant was robbed at gun point of his Amtrak issued radio as well as personal belongings estimated value $1,132. He was required to reimburse Amtrak in the amount of $595.00 for the loss of the radio on the premise he was negligent when he left the train station in Newark, thereby placing himself in jeopardy of being robbed. Amtrak paid the Claimant back the $595.00. 12/20/96

NEC-UTU-SD-278 - Claimant reimbursed in the amount of $138.00 towards depreciation of a radio he was required to pay for at full value, which amounted to $595.00. 12/20/96

RULE 46 – STARTING TIMES

NEC-UTU-SD-422 – Various Claimants – Time reverted back to 2:00AM pursuant to Rule 46(h), when ordered to report at 3:59AM**. 5/28/04**

PLB 6312 – Award No. 292 – Time paid under Rule 46(H) is straight time. Time and one-half starts 8 hours after the actual reporting time.

RULE 49 - RELIEF DAY EXTRA BOARDS

NEC-UTU-SD-261 - Claimant made application for the relief day extra list and stood for CYP-8 on both July 23 and August 14, 1993. The Carrier by-passed the Claimant in favor of a rest day employee who had not made application for the relief day extra list. **SUSTAINED** for eight (8) hours each date. Also see OC-UTU-SD-382. **12/18/97**

NEC-UTU-SD-348 - *Same as NEC-UTU-SD-261* and *OC-UTU-SD-382.*

NEC-UTU-SD-590 – A Conductor's vacancy was filed on various dates by rest day employees who had not made application to work their rest days as required by Rule 49. Claimant was the junior available promoted and qualified Assistant Passenger Conductor at the crew base. His assignment was Assistant Conductor, Run 323, which signs-up at Newburyport, Massachusetts. He filed a claim for not being used on the vacancies that were filed by the relief day employees who had not make application to work their relief days, on the basis that he stood for the work as provided for in Rule 13(b). Specifically, he claimed standing under Rule 13 (b)(5). **(Sustained for 8 hours)** 12/10/01

PLB 6312 – Award No. 6 – Claimant required to attend a training class on a rest day. He claimed eight (8) hours on the basis the Carrier violated the Agreement when they unilaterally cancelled his rest day by requiring him to attend class. **Claim denied.** 11/16/01

PLB 5953 – Case No. 17

FINDINGS

"This claim arose when the Claimant discovered that his application to be assigned for work on his rest days was mistakenly showing his rest day as a regular work day. As a result, the Claimant was not being called in to work on his rest days as he had requested. Claimant subsequently submitted a penalty time claim on February 21, 1996, for the dates of October 7, 14, 21, 28, 1995, November 4, 11, 18, 25, 1995, December 2, 9, 16, 23, 1995, January 6, 13, 27, 1996, and February 3, 1996.

"The Carrier denied the Claimant's claim for backpay contending that the claims for the dates in October, November and December were not submitted within the 30-day time limit defined by Rule 24(a).

"The Organization argues that the Claimant submitted claims as soon as he was made aware of the mistake that the Carrier had made. Therefore, the Organization argues that the Claimant should be allowed latitude under the time limit provision based upon his first knowledge of being aggrieved." **SUSTAINED.** 12/22/98

OC-UTU-SD-959 **– Sustained** for eight (8) hours for a violation of Rule 49. **5/28/04**

OC-UTU-SD-1272 **–** Claimant used on his rest day on an assignment that went on-duty at 3:00PM, however, he stood for an assignment that went to work at 2:00PM. He was allowed a four (4) hour runaround. **5/28/04**

PLB 6312 – Award No. 125 **–** Claimant submitted a letter to be called on his rest day. The Carrier claimed the letter was never received. The Board denied our claim for eight (8) hours for not being called because we had no proof the letter was sent, i.e., certified mail, return receipt. **5/28/04**

NEC-UTU-SD-261 - Rest day employees that made application for the rest day extra list is **allowed 8 hours** when the Carrier used a rest day employee who had not made application for the rest day extra list. 11/4/94

PLB 6312, Award No. 265 – Same as Award No. 125 of PLB 6312.

RULE 50 - HOURS OF SERVICE

PLB 5223 - Award No. 19 - Regular assigned Employee (3:59 PM yard assignment), is used on a 7:00 AM yard assignment. He claimed eight (8) hours under Rule 50 because he could not work his regular assignment on duty 3:59 PM, after working 7:00 AM to 3:00 PM on the extra assignment. **DENIED.** 12/20/96

PLB 5953 – Case No. 2 – Missed assignment out of the away from home Crew Base. Claimant should have worked on January 2, 1995; however, he was unable to do so because of the Hours of Service Act. Claim **DENIED**. See Labor's dissent for a complete understanding of this case. 6/5/00

PLB 6189 – Award No. 2 – Claimant on a straight-away-assignment that consumes three (3) days to complete, i.e. 1) going trip, 2) layover day, 3) return trip. He was unable to cover his assignment because of the Hours of Service Act in connection with the previous trip on the same assignment. He claimed eight (8) hours under Rule 50 for each of the three (3) calendar days involved. The Carrier only paid the first day, and the Board **DENIED** our claims for eight (8) hours for the second and third day. 6/5/00

PLB 6312 – Award No. 1 – Claim for payment under Rule 50 for more than one (1) calendar day was **denied.**

MISCELLANEOUS

PLB 3516 - Award No. 62, Off-Corridor - Deals with a meal allowance for a trip scheduled for less than 5 hours, which exceeded 5 hours (**DENIED**).

Letter #1 - Off-Corridor Agreement/System Docket No. OC-UTU-SD-78 - **SUSTAINED** for one hour at the straight time rate for moving an engine from one track to another for other than Claimants own train.

Letter #1, Off Corridor PLB 4874 - Award No. 15 - Pull through track 9 shove into track 5, remove tail hose and tie onto cars already on the track. (Claim **DENIED**.)

Letter No. 1 of the Off-Corridor Agreement - PLB 4874 – Award No. 25 - A road passenger crew at Chicago, after having detrained passengers, directed to move and spot their train at the postal terminal track for the unloading of mail, and then moving the train to the inspection track for electrical stand-by power. The claimants contend that they were required to perform a combination of road and yard work in violation of Letter No. 1 of the Agreement, and are therefore entitled to an additional days' pay. Claim **DENIED**.

Letter No. 1, Off-Corridor Agreement - PLB 4874 - Award No. 16, - One day's pay claimed by a road passenger crew for turning their engine on the Box WYE at Chicago. Claim **DENIED**.

Letter No. 4 of the On-Corridor Agreement, PLB 4874 - Award No. 23 - Claim **DENIED** for one days' pay for a road passenger Assistant Conductor being required to switch out a shop car at the initial terminal (Philadelphia) while yard crews were on duty.

Letter No. 4 of the On-Corridor Agreement, PLB 4874 - Award No. 24 - Claim **SUSTAINED** for a days' pay for the conductor of a work train because he was required to move an engine prior to departing his initial terminal (Philadelphia) which was not assigned to his train.

NOTE: *Letter No. 1 of the Off-Corridor Agreement and Letter NO. 4 of the On-Corridor Agreement* are identical; therefore, any settlement that applies to one would apply to the other.

See PLB 4971 - Award No. 1 - Involved a transfer from Conrail to Amtrak in accordance with Sec. 1165 of the Northeast Rail Service Act where the employee did not pass the Amtrak physical. It was a Tri-Party Board; Amtrak taking the

position the Claimant never became an Amtrak employee, while Conrail took the position he was no longer a Conrail employee when he bid Amtrak. **Board ruled in favor of Amtrak.**

PLB 5223 - Award No. 9 - The issue here involved lead time/notification/instructions when flowing from Conrail to Amtrak. The Board ruled in part here pertinent as follows:

> "*DECISION:* The Carrier contends, among other things, that there is no rule providing for the payment requested by the Claimant. Indeed, there isn't. However, there is an implied obligation of good faith and due diligence on the part of the Carrier. If there is convincing evidence that the Carrier did not exercise their duty to be reasonably diligent in their duty to facilitate the Claimant's return to service and if there is convincing evidence that this lack of diligence caused a delay in his return thereby adversely affecting his earnings, the Carrier can indeed be found liable.
>
> "In this case, the Carrier was not reasonably diligent. Sending out ambiguous notices on May 28 (a Tuesday) less than one week prior to the time it was necessary to report for a required class is not due diligence. If the notices indicated--and there is no apparent reason whey they couldn't have--precisely what was required to return to service, it would be a different story. However, the letter required further communication. The necessity for such communication raises the possibility of delay in addition to the delay in mailing.
>
> "While there is evidence that the Carrier wasn't necessarily diligent, the evidence is less than convincing that this caused the Claimant to miss his class. As fate would have it, the Claimant did get his letter in time to respond. He claims he called the DC Terminal Superintendent. However, the record prevents the Board from making such a finding of fact. This assertion was made at such a time that it was difficult to verify or deny. Moreover, the Board notes that such a call on May 31 cannot be verified by his telephone records. Accordingly, the claim must be **DENIED** for lack of proof." 11/4/94

Letter No. 4 of the On-Corridor Agreement - See PLB 5223 - Award No. 3

for the following:

> "Obviously, under Item No. 2, road passenger crews can perform work necessary in the handling of their own train. Yet this would not allow, as prescribed by Item No. 1, the performance of yard work beyond that necessary to handle their own train.
>
> "It is the decision of the Board that the Carrier is entitled to instruct the crew to wye their own train and place it on a storage track without additional compensation. The problem in this case is that the crew did more than that. They didn't merely or incidentally run over the inspection track in the course of storing the train. The crew actually performed work in connection with the inspection of the train. This was not work necessary to the handling of their train from Philadelphia to Harrisburg. It was not related to the operation of their assignment, but related to the maintenance of the train cars.
>
> "Accordingly, the crew is entitled to compensation for handling of the cars during the inspection/maintenance function. In terms of a remedy, the Carrier argued that if there was any liability, it should be limited to overtime pursuant to Award 77 of PLB 3516. There is no specific rebuttal to this from the Organization. "Therefore, it is appropriate that this be used as a guideline for fashioning the remedy in this case. In this regard, the record fails to reflect how much time was consumed in the pit inspection. The Parties are directed to meet and agree on a precise remedy. The Board will retain jurisdiction in the event an agreement can't be reached.
>
> "Award: The claim is **SUSTAINED** to the extent indicated above." 11/4/94

Exercising Seniority / C- 2 Benefits

See the decision of Referee Barry E. Simon, filed in Rule 2 Amtrak On and Off Corridor, for a sustaining award for benefits under Appendix C-2 for employees in the bid chain that was started by an incumbent of an Atlantic City assignment. Said service was discontinued as of April 2, 1995. Simultaneously, the awarding of all positions in Zone 2 in connection with the change of time bulletin was made effective as of April 2, 1995. 12/20/96

***First Division Award* - 24796** - Employment Relationship. Employee works under the Agreement during a period used to determine qualifications for a lump sum payment, but is working a management position at the time of payment. Agreement calls for an employment relationship at the time of payment to qualify. Employment relationship is maintained even though working a management position. Filed in Rule 2 On and Off Corridor Amtrak, and Rule 2 Conrail. 6/5/00

PLB* 5133 - *Award No.5 - Deals with a settlement of a FELA claim in regard to "all past and future claims" as follows:

> "Having thoroughly examined the Claimant's full and final release, the Board is of the opinion that the exclusory language releasing the Carrier from 'all past and future claims/ applies to claims which involve the very job related injuries for which he already received compensation. More particularly, the meaning of the term 'future claims/ as that term is used in the eighth 'Whereas' clause in correlation with paragraph numbered '2' and '9' of the release, does not extend to claims which are unrelated to the Claimant's injuries. In this contract, the Claimant was not prohibited from bringing the instant claim before this Board."

Filed under Rule 24 Amtrak On and Off Corridor and Rule 91 Conrail. 6/5/00

***SBA* 18 - *Decision No. 5930* - *Case No.* 3263** - The subject matter being researched involved the question of when does a dismissed employee's employment relationship end, at the time the employee is dismissed by the Company or at the time the decision is rendered by the Board upholding the dismissal.

Based on this decision, it was concluded that a person's employment relationship ends at the time the Company dismisses the employee, provided the dismissal is upheld upon appeal. Filed under Rule 25 Amtrak On and Off Corridor and Rule 93 Conrail. 6/5/00

***PLB* 6193 - *Awards* 1, 2, *and* 3** asked and answered the following three (3) questions concerning C-2 Labor Protection:

Award No.1

"Question at Issue:

UTU Question:

Can six different employees certified under Appendix C-2 in connection with the discontinuance of service between Philadelphia and Atlantic City all be charged with the earnings of position CPN-10 for the same time period?

Amtrak Question:

Are all protected employees who refuse to occupy a higher rated position, not requiring a change in residence, considered as occupying such higher rated position?

Award:

"For the reasons set forth in the above Findings, the UTU and the Amtrak Questions are
both answered in the negative."

Award No. 2

"Question at Issue:

UTU Question:

Are the Cost of Living payments under Article II of the February 18, 1992 UTU/Amtrak Agreement, a general wage increase, within the meaning of Article IV (A)(2) and Article IV (B)(1) of the parties' Appendix C-2 Agreement, which must be added to the guarantees?

Amtrak Question:

Is a Cost of Living Adjustment considered a General Wage Increase within the meaning of Appendix C-2?

Award:

"For the reasons set forth in the above Findings, the UTU and the Amtrak Questions are both answered in the negative."

Award No. 3

"Question at Issue:

UTU Question:

Does Article IV(c) of the parties' C-2 Agreement prohibit employees who qualify for a dismissal allowance, from being granted a separation allowance because they can hold a position that requires a change in residence?

Amtrak Question:

Is an employee able to hold a position through the exercise of his railroad seniority a 'dismissed employee' under the parties' Implementing Agreements and Appendix C-2 and thereby entitled to elect a separation allowance?

Award:

For the reasons set forth in the above Findings, the UTU Question is answered in the affirmative; the Amtrak Question is answered in the negative." 6/5/00

See the following decisions in connection with flowing between Conrail and Amtrak under Section 1165 of the Northeast Rail Service Act.

PLB 4971 – Award No. 1

PLB 5586 – Award No. 3

SBA 910 – Award No. 925 – Claim sustained against Conrail for lost earnings when Amtrak rejected an employee for transfer. 6/5/00

PLB 6189 – Award No. 17 – Working under two (2) different Agreements, i.e., **1)** MTBA Agreement dated October 8, 1986 and **2)** New Commuter Service Agreement of November 23, 1999. Claim **denied.**

PLB 6312 – Award No. 44 - Retroactive wage adjustment in connection with the Agreement of October 27, 1999, is denied for employees that were classified as occupying a temporary management position with a XX job code.

OC-UTU-SD-806 – Claimant J. W. Frantangelo allowed one (1) hour at the straight time rate in accordance with Award No. 3 of PLB 4600 for watering Train No. 30 at Pittsburgh, PA on November 25, 2001. 8/5/02

PLB 6462 – Award No. 62 - Interpretation – Deals with deducting outside earnings when an employee is paid for lost time. It includes good language and other precedent in regard to not counting out of service insurance payments. Filed in Rule 25 Amtrak, On & Off-Corridor. 1/10/07

PLB 6312 – Award No. 287 – Discontinuance of service between New Orleans and Jacksonville because of Hurricane Katrina. C-2 benefits denied.

PLB 6312 – Award No. 221 – Claimant injured and settled his FELA case for $225,000.00, and a job as a yardmaster. Eventually, he tried to return to train service, and the Carrier claimed he could not do so based on the principal of estoppel. The Board agreed with the Carrier. 1/10/07

PLB 6312 – Award No. 252 - C-2 benefits for an employee indirectly affected by a discontinuance were denied. See Labor's Dissent. 1/10/07

OC-UTU-SD-1944 – S. W. Jones – The Claimant's application for C-2/Mittenthal Protection approved immediately prior to a hearing by PLB 6312. Brief prepared should we need it for a future case. 1/10/07

PLB 6312 – Award No. 254, Eight hours denied for handling an End of Train (EOT) Device for a road train while employed in yard service. 1/24/07

OC-UTU-SD-2121, L. J. Brown – Claimant denied lost earnings under the CARE Program Agreement because he had not spoke to the EAP Counselor. Right before the case was to be heard, the Carrier agreed to pay $570.72 to settle the case. Brief prepared if needed in the future.

PLB 6312, Award No. 130 – Denied NS employees the right to flow over to Amtrak because of their work record.

MAKE WHOLE PRINCIPLE:

See OC-UTU-SD-113 - A crew used to dog catch which caused them to miss their regular assignment, Shelby to Minot on 1/31/89 and Minot to Shelby on 2/2/89. **SUSTAINED** for the earnings of their regular assignment (both dates) less the amount earned dog catching on 1/31/89.

See PLB 4874 - Award No. 46 for the following language:

> "It would therefore seem to the Board that while the Carrier, in making assignments offers an implied agreement that such assignments will operate as advertised, and employees have a right to believe that they will be compensated accordingly in being available for such assignments, that this does not mean that the Carrier does not have the right to annul assignments in whole or part, particularly in an emergency. Therefore, the employees need recognize that there may well arise an occasion when the implied obligation on the part of the Carrier to operate within the confines of advertised assignments may have to be, as in the case at issue, temporarily annulled or changed account conditions over which the Carrier has no control and that the affected employees will only be entitled to compensation that they would normally have earned under normal operations".

OC-UTU-SD-825, OC-UTU-SD-855, and OC-UTU-SD-857 – Assignment temporarily changed. Claimants made "Whole" based on advertised earnings. **5/28/04**

PLB 5223 - Award No. 6 - Involves the suspension of service in connection with the Machinists strike against the CSX. The freight Carriers were required to make their employees "Whole" under the terms of the United States House Joint Resolution 517. The Board ruled as follows:

"Decision: It is the conclusion of the Board that the Carrier properly annulled the Claimant's position pursuant to Rule 10(B). As for whether the payment sought is required by HR 517, it is not within the jurisdiction of this Board to interpret legislation. Even so, we observe that it does not appear to address Amtrak employees.

"Award: The claim is **DENIED.**" 11/4/94