

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24248
Docket Number TD-23973

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association
{ Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the American Train Dispatchers Association that:

(a) **The** Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier" violated the currently effective Agreement between the parties, Article IV(h)(1) thereof in particular, when on November 18, 1978 ~~it~~ did not call extra train dispatcher H. S. James for a vacancy on the first shift assistant chief dispatcher's position in Atlanta, Georgia.

(b) For the **above** violation, the Carrier shall **now** compensate **Claimant** H. S. James one day's pay at the straight time rate of assistant chief dispatcher.

OPINION OF BOARD: Claimant herein, the senior **extra employe**, was **not** called for a vacancy on **November 18, 1978**. That vacancy occurred at about **4:00 A.M.** when the regularly **assigned** dispatcher marked off sick and the starting time of the **assignment** was **8:15 A.M.** No other extra train dispatchers **were** available and Carrier used a regularly assigned dispatcher at the time and one-half rate.

Carrier **avers** that Claimant was not called because his residence was **171 miles from** the Train Dispatchers' office in Atlanta **and** there was insufficient time for him to report at the designated starting time. Petitioner **argues** that first if promptly celled, **Claimant** could have reported on **time** and furtherwre he should have been called and asked if he could **make** it or wished to decline.

Carrier's position is that there simply was insufficient **time** after **4:00 A.M.** for Claimant to prepare himself for work (including meals) and drive over 170 miles to report for duty at the designated **time** and place. Carrier asserts, additionally, that it obviously has the right to expect and **demand** that its Train Dispatchers report for duty at the designated time and place. It is also argued that Petitioner has failed to met its burden of proof in this case.

The Organization asserts that Claimant would **indeed** have had the time to get to his **assignment** at the specified time. Further it is contended that the burden was upon Carrier since an affirmative defense was asserted, and that burden was **not** borne. Petitioner also notes substantial disagreement with the assumptions of Carrier with **respect to the time** required to prepare for work and drive the required distance.

It is noted that Carrier made **some** judgments with respect to the **time** required for Claimant to get to **work**, if he had been called, and on these judgments decided not to call him. As an example, Carrier asserts that it would have taken **Claimant** an hour to prepare himself before leaving his residence. Co

its face, Carrier's **judgment** is faulty; even though Carrier correctly did not wish to have its **employee** exceed the statutory speed **limit**, it had no way of knowing whether or not he could have reported on **time**. The driving and preparation time were both **items** which **Claimant** should have been given the opportunity to assess. This is particularly evident since Carrier has stated that it did **not know** (not having been furnished the information by **Claimant**) how much **time** he would require to report for duty after receiving a call. **Under** that circumstance Carrier clearly should have called Claimant, offered him the assignment, as provided in the Agreement, and left to **him** the decision as to whether or not he had enough time. For the reasons **indicated**, the Claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees **involved** in this dispute are respectively Carrier and Employees the Railway **Labor** Act as **approved** June 21, 1934;

That this Division of the Adjustment **Board** has jurisdiction **over** the dispute involved herein; and

That the **Agreement** was violated.

A W A R D .

Claim **sustained**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment **Board**

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

