

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

"(A) CSX Transportation, Inc. ('Carrier') violated Article 5-I ('Order of Call') of its Train Dispatcher's basic schedule agreement applicable in the Jacksonville centralized train dispatching center on April 1, 1990, when it failed to call regular assigned second trick train dispatcher A. P. Fox for overtime on his rest day.

"(B) Because of said violation the Carrier shall now compensate AP Fox for eight (8) hours pay for lost work opportunities applicable to the Jacksonville centralized train dispatcher's rate of pay \$165.00 for April 1, 1990."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization submitted a claim for one day of pay at the overtime rate when the Carrier failed to call the Claimant to work on his regular Position #203 (Corbin Division) on his rest day, April 1, 1990, and instead called in a junior Dispatcher.

Carrier asserted on the property that the junior Dispatcher had been awarded a position on the Chicago Division Extra Board, but Carrier was unable to release him from his assignment on the Corbin Division Extra Board and starting on April 1, 1990, he was being compensated at the penalty rate under Article 6 (a) 4 because he was not permitted to take over his new position. Thus, Carrier argues, since he was still on the Corbin Extra Board, he was properly assigned to fill the Position No. 203 vacancy.

Article 5 (i) of the Agreement provides that when a vacancy exists and there are no train dispatchers available at the straight time rate, vacancies are filled in a designated order. The first priority is to call the regularly assigned dispatcher who is on his rest day and who is regularly assigned to the position on which the vacancy occurs.

There is no question that the Claimant met the requirements, and had the first priority of call, under Article 5 (i), but the Carrier argues the applicability of Article 6 (a) 4 which provides a penalty if the Carrier can not place an employee on a bid position within six days after it is awarded. Such was the case when the service requirements precluded a release of the junior Dispatcher to the Chicago Division and he was still located in the Corbin Division at a penalty rate on April 1, 1990, pursuant to an Agreement with the Organization.

Regardless of how one defines the basis for the pay being received by the junior Dispatcher on April 1, 1990, and whether or not that payment was a direct result of an Agreement between the parties, the fact remains that he was not available at the straight time rate. On the property the parties argued the impropriety of each others position, and the fairness of the claim submitted. But, this Board may not offer equitable relief. On occasion, a reading of a contract may produce harsh results, and we do not question that a sustaining award results in an increased cost to the Carrier. But, were we to go beyond the rather clear wording of the first priority of Rule 5 (i) we would be venturing into an area beyond our jurisdiction.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.