

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37570
Docket No. TD-37735
05-3-03-3-83**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (
(American Train Dispatchers Association
(BNSF Railway Company

STATEMENT OF CLAIM:

"The Burlington Northern Santa Fe Railroad ("the Carrier") violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers ("the Organization"), Articles 2(e), 3(a) and 3(b), in particular, when on November 30, 2001, it required and/or allowed train dispatcher Jackson to work a position other than the one obtained in the proper exercise of seniority, on his assigned rest day, and compensated him at the straight time rate of pay."

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 employee 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 were given due notice of hearing thereon.

At the relevant time, Dispatcher B. E. Jackson was assigned to a third shift Glacier position, at Fort Worth, with Friday and Saturday as rest days.

According to the Organization, on Friday, November 30, 2001 - Jackson's rest day - Jackson was required and/or allowed by proper authority to break in on the Third Havre West position and was compensated only at the straight time rate. This claim followed.

The Carrier asserts that Jackson requested a day to break in so that he would then be qualified on the new position and requested to do so on his rest day. According to the Carrier, Chief Dispatcher J. Gannon agreed to Jackson's request, but advised Jackson that he would only be compensated at the straight time rate.

In its February 28, 2002 letter, the Organization agreed that "... Jackson did indeed request a day of break-in on his rest day, November 30, 2001, to be qualified on an adjacent territory."

For all purposes, this dispute is no different than Third Division Award 37569 where we determined that we did not have to address the Organization's argument that there is a distinction between training classes and on-the-job training and held:

"The Organization is correct that it is the entity which polices compliance with the Agreement and that DeHaas' wishes do not permit the Carrier to change the terms of the Agreement. But what we have here is a case with facts showing that the employee made the request to be accommodated and the Carrier complied with that request. In such a case - where there was no direction or instruction by the Carrier for the employee to work on her rest day - even if we found a violation of the Agreement, we would not fashion any remedy to compensate the employee at other than the straight time rate. Because DeHaas initiated the request - and did so without apparent suggestion or inducement from the Carrier - the Organization is estopped from obtaining additional relief beyond the straight time rate. While the Organization is correct that the Carrier cannot individually negotiate with employees to change or waive the terms of the Agreement, in this case, because DeHaas

made the request on her own to train on her rest day, basic principles of estoppel - indeed, simple fundamental fairness - bar this claim. Under these unique circumstances, because no relief can be granted, no violation can be found."

This record shows that Jackson initiated the request to break in on his rest day and did so without suggestion or inducement from the Carrier. For the same reasons stated above in Third Division Award 37569, this claim shall be denied. This result should not be construed as a broad endorsement of individuals initiating requests for special treatment in return for diminished benefits or pay.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of August 2005.