

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38132
Docket No. TD-38774
07-3-05-3-183

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

- “1. The SOO Line Railroad Company (the Carrier) violated the current schedule agreement between the Carrier and the Organization, including Rules 7, 11, and 23 in particular, when on the dates extending from March 2, 2004 through March 26, 2004, the Carrier failed to properly compensate the claimant while being held off his awarded temporary assignment of Swing 4.
2. Because of said violations, the Carrier shall now compensate claimant S. G. Diorio \$1928.35 which represents the difference between the amount already compensated the claimant and the amount sought in this claim. These amounts are listed as follows:

<u>Date</u>	<u>Amount Paid</u>	<u>Amount Sought</u>	<u>Difference</u>
March 2, 2004	\$207.95	\$308.78	\$100.83
March 3, 2004	\$308.78	\$308.78	\$ 0.00
March 4, 2004	\$308.78	\$308.78	\$ 0.00
March 5, 2004	\$207.95	\$308.78	\$100.83
March 6, 2004	\$207.95	\$308.78	\$100.83
March 7, 2004	\$207.95	\$308.78	\$100.83
March 8, 2004	\$207.95	\$308.78	\$100.83
March 9, 2004	\$217.15	\$317.98	\$100.83
March 10, 2004	\$308.78	\$308.78	\$0.00

March 11, 2004	\$0.00	\$207.95	\$207.95
March 12, 2004	\$207.95	\$308.78	\$100.83
March 13, 2004	\$207.95	\$308.78	\$100.83
March 14, 2004	\$207.95	\$308.78	\$100.83
March 15, 2004	\$207.95	\$308.78	\$100.83
March 16, 2004	\$207.95	\$308.78	\$100.83
March 17, 2004	\$ 0.00	\$ 0.00	\$ 0.00
March 18, 2004	\$319.68	\$218.65	\$(100.83)
March 19, 2004	\$207.95	\$308.78	\$100.83
March 20, 2004	\$207.95	\$308.78	\$100.83
March 21, 2004	\$207.95	\$308.78	\$100.83
March 22, 2004	\$207.95	\$308.78	\$100.83
March 23, 2004	\$207.95	\$308.78	\$100.83
March 24, 2004	\$308.78	\$308.78	\$ 0.00
March 25, 2004	\$ 0.00	\$207.95	\$207.95
	<u>\$4891.20</u>	<u>\$6819.55</u>	<u>\$1928.35"</u>

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.

On February 21, 2004, the permanent incumbent of Swing 4 was awarded a temporary vacancy on another position. Swing 4 was bulletined as a temporary vacancy on that same date and it was awarded to the Claimant on February 24, 2004.

On March 1, 2004, the permanent incumbent of Swing 4 was awarded another permanent position, so the Swing 4 position became a permanent vacancy and was bulletined as a permanent position. The position was awarded on March 4, 2004 to Dispatcher B. J. Meyers, who needed training before assuming his new permanent position.

Dispatcher Meyers did not assume his permanent assignment until March 28, 2004, when his training was complete. During the period from March 1 through March 28, the position was filled on a day-to-day basis in accordance with Rule 15, Order of Call. The Organization contends that the Claimant held the temporary vacancy to the position until it was protected on a permanent basis by Dispatcher Meyers. The Organization further contends that because the Claimant was held off the position, he is entitled to overtime compensation on the days he was denied the opportunity to protect the awarded position.

The Carrier argues that the temporary vacancy ceased to exist when the position was bulletined as a permanent vacancy on March 1, 2004. We disagree. Had the Dispatcher who was awarded the permanent position assumed the position on that date, the Carrier's argument would have merit. On this record, however, Dispatcher Meyers was not qualified to assume Swing 4 until March 28, 2004. It remained temporarily vacant until he was qualified and assumed the permanent position on that date.

Rule 23 provides as follows:

"A train dispatcher awarded a position in accordance with the rules of this agreement shall be placed thereon within seven (7) days. If not so placed, he shall be compensated at overtime rate for each day he is held off such position after the seventh day until placed thereon."

The Claimant was awarded the temporary vacancy on February 24 and was never placed onto the position by the Carrier. He is entitled to compensation claimed for the period from March 2 through March 25, 2004 in accordance with Rule 23. However, the record indicates that the Claimant was not rested under the Hours of Service Act and, therefore, he was unavailable to work on the claim dates of March 11 and 25, 2004. After deducting the amount claimed for those two dates, the claim will be sustained in the amount of \$1,512.45.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of April 2007.