

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20383
Docket Number TD-19860

John H. Dorsey, 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 effective Agreement between the parties, Article IV(h)(2) thereof in particular, when it refused to compensate extra train dispatcher L. L. Keene, Jr. for three (3) hours actual time traveling from outlying point Newberry, Florida to Jacksonville, Florida to protect extra train dispatcher service on the following dates: May 27, 28, 29, 30, June 3, 7, 8, 9, 10, 12, 14, 15, 28, 29, July 2, 9, 10, 11, 12, 16, 18, 25, 26, 27, 28, August 2, 4, 6, 7, 8, 9, 13, 14, 15, 16, 20, 21, 22, 23, 27, 28, 29, 30, 1971.

(b) For the above violation the Carrier shall now be required to compensate the Claimant for three (3) hours time at pro rata rate for each of the dates listed in paragraph (a) above. Such compensation to be in addition to any compensation already received by Claimant for service performed on said dates.

OPINION OF BOARD: Article IV(h)(2) of the Agreement between the parties herein and in effect on Claim dates reads:

* * * * *

(2) Extra train dispatchers working for the Company in some other capacity, who are located at outlying points, when required to perform extra dispatcher's service will be paid for the actual time traveling with a maximum of eight hours at the trick dispatcher's straight-time rate on the going trip only. Extra men who do not reside within the limits of the Superintendent's jurisdiction will be paid only for traveling time within the limits of the division on the going trip. (Emphasis supplied)

Claimant was regularly employed by Carrier at Newberry, Florida, as an Agent-Operator. On the Claim dates he was assigned as an Extra Dispatcher in Carrier's Jacksonville, Florida, office in compliance with his contractually vested seniority rights as prescribed in Article IV(h)(1) of the Agreement. Petitioner admits that Claimant

on the Claim dates "...was an 'Extra train dispatcher...working for the Company in some other capacity,...located at (an) outlying point...' as the terminology is used in Article IV (h)(2)" of the Agreement. The cited Article is quoted supra in toto.

The distance between Newberry and Jacksonville is approximately 90 miles. Claimant, of his own volition, commuted by automobile from Newberry to Jacksonville and return on each of the Claim dates. The Petitioner avers that Claimant was contractually entitled to compensation for three hours travel time for the commuting on each of the Claim dates. Carrier, citing Article IV (h)(2), replies that Claimant, since his assignment was for consecutive days, "will be paid for the actual time traveling with a maximum of eight hours at the trick dispatcher's straight time rate on the going trip only". (Emphasis supplied)

This Board has no equity powers (jurisdiction) vested by the Railway Labor Act (RLA). In the instant dispute the Board's jurisdiction is confined to "the interpretation or application of agreements (between the parties herein) concerning rates of pay, rules, or working conditions." RLA, Section 3. First (i). It matters not what stranger agreements provide; nor, does industry practice when the wording of the confronting agreement is not ambiguous; nor, what may be our sense of equity.

It is hornbook that this Board may not enlarge upon or diminish the terms of a collective bargaining agreement. If either party finds the terms of such an agreement not to its liking it must seek a remedy through collective bargaining. RLA, Section 6.

Petitioner argues that our Awards No. 19532 and 19533, in which the parties herein were parties therein, are precedents that are dispositive of the issue in the instant dispute. The facts in each of those cases are at variance with the facts in the instant case. Consequently, we find those two Awards are inopposite.

Petitioner admits as fact that Claimant, on Claim dates, was in the status defined in the first sentence of Article IV (h)(2). The sentence is not ambiguous. Consequently, we are compelled, under the principles of collective bargained labor contract construction, to find that Claimant was contractually entitled to traveling compensation related to "the going trip only."

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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 within the meaning of 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 Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September 1974.

Labor Member's Dissent to Award 20383, Docket TD-19860

Award 20383 is so palpably erroneous that it is not only entirely without precedential value but gives the appearance of not being based on reason or fact nor on the provisions of the Agreement between the parties.

Notwithstanding the recitation of high sounding principles such as: the Board has no equity powers, confined to interpretation of agreements, may not enlarge or diminish the terms of a collective bargaining agreement, or if neither party does not like the terms of the Agreement the remedy is through collective bargaining, Award 20383 fails to recognize and adjudicate the dispute on either the claim presented or on the basis of the Agreement provisions. This digression from the main issue or the crux of the dispute in Award 20383 had the direct result of the decision not being based on the Agreement between the parties and, in fact, in direct contradiction to the Agreement.

Award 20383 reaches a pinnacle of contradiction when considering awards concerning similar disputes between the same parties (claims also involving consecutive days in Award 19532) stating:

"Petitioner argues that our Awards No. 19532 and 19533, in which the parties herein were parties therein, are precedents that are dispositive of the issue in the instant dispute. The facts in each of those cases are at variance with the facts in the instant case."

And then immediately counters stating:

"Consequently, we find those two Awards are inopposite."
(Emphasis supplied)

Award 20383, after holding that the facts were in variance, held that Awards 19532 and 19533 were inopposite, i.e. not diametrically different, contrary, antagonistic or opposed.

Award 20383 states "On the Claim dates he was assigned as an Extra Dispatcher in Carrier's Jacksonville, Florida, office in compliance with his contractually vested seniority rights as prescribed in Article IV (h) (1) of the Agreement." Article IV (h) (1) reads:

Labor Member's Dissent to Award 20383, Docket TD-19860 (Cont'd)

"(1) Train dispatcher extra boards shall be established by the Company in each dispatching office. Train dispatchers who are not regularly assigned as such shall select the extra board of their choice by notifying the appropriate Division Superintendents, providing a copy thereof to the General Chairman and the involved Office Chairmen. A train dispatcher who is not regularly assigned and who fails to select an extra board of his choice will be considered as being assigned to the extra board attached to the office in which he last performed service as train dispatcher.

"Extra train dispatchers placing themselves on the extra board of their choice, after having had a sufficient time to qualify, will be required to perform, in seniority order, all extra work for which available. Failure to perform extra train dispatcher service in accordance with this Article IV(h) will result in forfeiture of train dispatcher seniority in accordance with Article IV(g).

"Extra train dispatchers desiring to transfer from one extra board to another may do so by giving thirty (30) days' advance written notice to the appropriate Division Superintendents, with a copy thereof to the General Chairman and the involved Office Chairmen. After an extra train dispatcher has exercised the privilege of transferring he cannot again transfer until a period of one calendar year has elapsed unless during such period senior extra train dispatchers have become attached to the extra board for that office. No extra train dispatcher may be assigned to more than one extra board at any one time.

"An extra train dispatcher will not be considered available for any assignment having a starting time prior to the elapse of twenty-three (23) hours from the starting time of the assignment he previously filled.

"Nothing in this Article IV(h)(1) shall be deemed as creating any guarantee of any number of days' work for extra train dispatchers."

Labor Member's Dissent to Award 20383, Docket TD-19860 (Cont'd)

From the foregoing Article IV (h) (1) of the Agreement it is apparent that Claimant had either selected the Jacksonville Office Extra Board as the extra board of his choice or had failed to select an extra board of his choice and had been assigned to the Jacksonville Office Extra Board because this was the office in which he last performed service as train dispatcher. The selection of or assignment to an office extra board is not dependent upon the exercise of seniority rights. Any extra dispatcher regardless of his seniority standing becomes attached or assigned to an extra board and is limited to one extra board.

Award 20383 holds that "On the Claim dates he was assigned as an Extra Dispatcher in Carrier's Jacksonville, Florida, office in compliance with his contractually vested seniority rights" and as a basis for this holding follows with the comment "as prescribed in Article IV (h) (1) of the Agreement". The exercise of seniority rights is covered under Article IV (c), which opens with the statement "A train dispatcher may exercise seniority rights only when:" and then sets out seven (7) specific occurrences which make the appropriate exercise of seniority specified in Article IV (d) applicable. Item (3) of Article IV (c), Exercise of Seniority, permits an exercise of seniority to obtain permanent vacancies in accordance with Article V (a) or temporary vacancies in accordance with Article V (b). Article V (a) covering permanent vacancies does contemplate and allow an exercise of seniority by the extra train dispatchers, however, the work involved in the instant claim was not a permanent vacancy and Article V (a) is not applicable to this dispute. While Article V (b) covering temporary vacancies could be construed to cover some of the claim dates, i.e. vacancy of more than four (4) work days but less than 180 calendar days duration, the exercise of seniority to make application for temporary vacancies under Article V (b) is limited to regularly assigned train dispatchers. Extra train dispatchers are not allowed to exercise seniority rights to obtain temporary vacancies under Article V (b).

Article IV (h) (1) does not establish "contractually vested seniority rights" to periods of extra dispatching work as Award 20383 implies. What is established is an obligation for the extra dispatcher, i.e. "will be required to perform, in seniority order, all extra work for which available." The only mention of seniority is that extra dispatchers will be called for, i.e. be required to perform, extra work in the order of their seniority. Failure to perform extra train dispatcher service under this requirement will result in the forfeiture of train dispatcher seniority in accordance with Article IV (g). An extra train dispatcher cannot exercise seniority rights

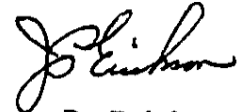
to obtain temporary vacancies or to pick and choose extra work of four (4) working days or less that do not fall within the definition of a temporary vacancy or position but must perform extra work on a day-to-day basis off the extra board for which available. Article IV (h) (1) establishes when an extra train dispatcher is available by stating that "an extra train dispatcher will not be considered available for any assignment having a starting time prior to the elapse of twenty-three (23) hours from the starting time of the assignment he previously filled". When there is extra dispatching work to be performed on a given day, the senior available (as defined in the Agreement) extra dispatcher is required to perform the extra work. This requires a day-to-day determination of service needed and assignment of this extra work to the available extra train dispatchers in the order of their seniority. If they are not available for extra work on a given day, they do not work and Article IV (h) (1) provided "Nothing in this Article IV(h)(1) shall be deemed as creating any guarantee of any number of days' work for extra train dispatchers".

Award 20383 errors when it states "Claimant, of his own volition, commuted by automobile from Newberry to Jacksonville and return on each of the Claim dates". Claimant did not go from Newberry (an outlying point) to Jacksonville of his volition but because he was required to perform extra dispatcher's service on each of the claim dates. Award 20383 continues to error stating "The Petitioner avers that Claimant was contractually entitled to compensation for three hours travel time for the commuting on each of the Claim dates" to the point of changing the claim submitted by the Petitioner. The claim was not for commuting between Newberry and Jacksonville but as the statement of claim shows "for three (3) hours actual time traveling from outlying point Newberry, Florida to Jacksonville, Florida to protect extra train dispatcher service". What was claimed was not commuting time but the going trip (Newberry to Jacksonville) only on each of the claim dates.

Notwithstanding that the Agreement provides that each extra train dispatcher shall either select or be assigned to a train dispatcher extra board, one of which is established in each dispatching office, the parties saw fit to write a special rule, Article IV (h) (2), providing for compensation for extra train dispatchers working for the Company in some other capacity who are located at outlying points. Award 20383 states that "Petitioner admits as fact that Claimant, on Claim dates, was in the status defined in the first sentence of Article IV(h)(2)" and follows with the comment that "The sentence is not ambiguous". Yet, the finding in Award 20383 was that the Agreement was not violated and the Claim was denied.

Labor Member's Dissent to Award 20383, Docket TD-19860 (Cont'd)

Award 20383 is palpably erroneous and without precedential value and I must dissent.


J. P. Erickson
Labor Member

CARRIER MEMBERS' RESPONSE TO
LABOR MEMBER'S DISSENT,
AWARD 20383, DOCKET TD-19860

"He draweth out the thread of his verbosity
finer than the staple of his argument." (Shakespeare,
Love's Labour's Lost: Act V. Sc.1, Line 18).

P. L. Carter

W. B. Jones

G. M. Youlin

H. F. M. Blackwood

J. F. Mayla