NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20844
THIRD DIVISION Docket Number TD-20938

Louis Norris, 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 (hereafter referred to as "the Carrier"), violated the effective Agreement between the parties, Article III(a) and Article III(C) thereof in particular, in depriving Claimant R. E. Bounds of service to which he was entitled to perform Thursday, January 11, 1973, one of Claimant's assigned rest days.

(b) Because of said violation the Carrier shall now be required to compensate Claimant R. E. Bounds one (1) day's compensation at the rest day rate.

OPINION OF BOARD: The Organization here alleges that Carrier violated the Agreement between the parties, specifically Article III(a) and (c), "in depriving Claimant of service which he was entitled to perform" on one of his assigned rest days. The following dates are pertinent to this dispute:

1) January 8th and 9th, 1973 - Claimant was absent from duty due to illness in his family. These were the 4th and 5th days of his regular five-day tour of duty, the next two days being his "rest days" under the Agreement.

2) January 10th (1st rest day) - not pertinent.

3) January 11th (2nd rest day) - at about 7:20 a.m. Claimant "marked up", indicating that he was ready to resume duty.

4) On the same day, January 11th, at 7:00 a.m., there being no relief or extra train dispatchers available, Carrier assigned Train Dispatcher Langley to fill the position.

5) January 12th, 11:59 p.m., was the next starting time of Claimant's regular tour of duty.

There is no dispute that the position assignment to Langley as of 7:00 a.m. on January 11th was proper under the Agreement since he was the senior available employee at the time, Claimant being absent and there being no relief or extra train dispatcher available. Petitioner contends, however, that since Claimant had given at least 40 hours notice of availability prior to the starting time of his regular assignment, he should have been permitted to fill the position on January 11th.

Petitioner cites Article III(a) and III(c) of the Agreement, which read as follows:

"ARTICLE III

(a) Rest Days

Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief.

Unless prevented by the requirements of the service, extra train dispatchers will be relieved from train dispatcher service for a period of two (2) days for rest day purposes after they have performed five (5) consecutive days' work as train dispatcher.

Such rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working a train dispatcher in excess of five (5) days per week.

* * * * * * * * * * * * *

(c) Rest Day Duration

The term 'rest days' as used in this Article means that for a regularly assigned train dispatcher and/or regularly assigned relief train dispatcher having the same starting time for five (5) consecutive days, seventy-two (72) hours (48 hours in instances of non-consecutive rest days) and for a regularly assigned relief dispatcher (except as above provided) and extra train dispatcher (who performs five (5) consecutive days of service as train dispatcher) fifty-six (56) hours (32 hours in instances of non-consecutive rest days) shall elapse between the time required to report on the day preceding

"the 'rest days' and the time required to report on the day following the 'rest days.' These definitions of the term 'rest days' will not apply in case of transfers account train dispatchers exercising seniority.

. . . . . "

These subdivisions of Article III define "Rest Days" and "Rest Day Duration" and, after careful review and analysis, we are unable to conclude that this dispute involves any violation thereof. Nor does the record evidence support such contention by Petitioner.

More to the point, Petitioner directs the Board's attention to the general rule controlling the filling of such vacancies, which, in effect, provides "that in the absence of a relief or extra employee, the regular incumbent of a position is entitled to work his position on a rest day thereof." Petitioner cites many prior Awards in support of this principle, with which we have no quarrel.

However, we are compelled to the conclusion that the foregoing principle, assuming its applicability here, was fully complied with by Carrier. For, on the very day in question, January 11th, at 7:00 a.m. (prior to the time when Claimant "marked up"), Langley was the senior available employee for such position. Claimant, as the incumbent, was not available at that time; nor was there then any relief or extra employee available. The record indicates nothing to the contrary. Accordingly, Carrier acted in compliance with the above stated general rule in assigning Langley to the position in question.

Petitioner's contention that sufficient time existed for Carrier to reverse its assignment to Langley and assign the position to Claimant must be rejected as not well founded. There is no rule in the Agreement requiring Carrier to proceed in such manner. Conversely, had it done so, it could very well have been faced with a grievance filed by Langley for violation of the very rule cited by Petitioner.

It is well settled by controlling authority that this Board has no power to impose principles of "equity" or "justice". Our responsibility and obligation is to interpret and apply the provisions of the Agreement between the parties, as written. Nor are we clothed with any authority to rewrite the Agreement in favor of either side to the dispute. Matters extraneous to the Agreement are not within our province and must be left to the principals for future negotiation.

See Awards 15380(Ives), 16373(Zack), 18801(Ritter), 19004(O'Brien), 19894(Lieberman), and 20013(Lieberman), among many others.

Carrier's major contention is that Claimant failed to comply with the Agreement. Specifically, in support of its position, Carrier cites Claimant's failure to comply with Article VI(b) of the controlling Agreement, which reads as follows:

"ARTICLE VI

. . . .

(b) Returning from Leave of Absence

. . . .

An assigned employee, when returning after absence for any reason, regardless of the number of days so absent will be required to give the proper Division Officer not less than eighteen (18) hours' advance notice of his return prior to the starting time of his assignment, in order that the employee filling his vacancy may be notified the regular incumbent will protect the assignment the following work day. It is understood that when an employee gets permission to be relieved for a specified time, he has given the required notice as to when he will return to service."

We stress and underline the following language from the above quoted subdivision of Article VI:

1. "an assigned employee, when returning <u>after absence for any reason</u>" - This language is clear and unambiguous and provides for no exception. It is clearly applicable to Claiamant.

2. "will be required to give . . . <u>not less than eighteen (18) hours advance notice</u> prior to the starting time of his assignment" - Similarly, this language is devoid of any ambiguity or exception. It is clear and concise and fully applicable to Claimant. He was an assigned employee, had been absent, and failed to give the required 18 hours notice prior to the starting time of the very assignment of which he claims to have been deprived. The fact that Claimant failed to give such 18 hours notice is amply borne out by the record and is not disputed by Petitioner. Claimant's reference to "40 hours notice" does not relate to the assignment in question, but to the start of his regular tour of duty.

3. "in order that the employee filling his vacancy may be notified the regular incumbent will protect the assignment the following work day." - This language is of particular significance, for the express purpose and design of subdivision (b) is thus clearly spelled out. Reasonable notice of 18 hours is required so that the employee filling the vacancy (Langley in this case) can be notified that the incumbent (Claimant in this case) will fill the position the following work day. To hold otherwise would negate the express language and intent of Article VI (b).

We acknowledge Petitioner's argument that Article VI (b) does not apply to "rest days", but we are unable to find any language in the Agreement before us which sustains such contention. On the contrary, Article VI is entirely devoid of any such reference or omission. It is clearly applicable to the confronting claim, for we are compelled to apply the Agreement as written. We have no authority to alter, add to or detract from the specific and unambiguous language agreed to by the parties.

See Awards 15380, 16373, 18801, and others cited above.

Petitioner cites specifically Award Nos. 16836 and 18571 as controlling here. In neither of these cases, however, was Article VI (b) involved, which, as we have indicated above, is controlling upon the instant dispute. These Awards, therefore, are clearly distinguishable from the factual situation here involved.

On the basis of the record evidence and the pertinent portions of the Agreement, therefore, we are inevitably impelled to the conclusion that Petitioner has not sustained its burden of proof. In short, it has failed to establish any violation of the Agreement. We quote the following from Award 15533 (McGovern), being one of many to which this Board has consistently adhered on the same issue.

> "Superimposed on the above is the fact that the Petitioner has not cited a rule specifically as having been violated; further, a review of the record convinces us that there is no rule to support the claim, and in the absence of such a rule, the Board is powerless to supply one. This principle has been well enunciated in numerous awards of this Board. We cite one of the many in Third Division, Award 10994(Hall), wherein it was held:

'This Board has no authority to supply rules where none exist . . . Consequently, there being no rule, there could have been no violation of same.'"

Accordingly, in view of the above findings and controlling authority, we will deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1975.

Labor Member's Dissent to Award 20844, Docket TD-20938

Award 20844 states:

> "We have no authority to alter, add to or detract from the specific and unambiguous language agreed to by the parties."

As this statement immediately follows a dissection of the third paragraph of Article VI (b) (including a piecemeal interpretation obviously counter to the intent and purpose of the entire rule as written), Award 20844 is incongruous at best.

I must dissent.

J. P. Erickson
Labor Member