NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20946
Docket Number TD-20979

Irwin M. Lieberman, 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)(1) thereof in particular, when it failed to require Claimant Senior Extra Train Dispatcher J. C. Cannon to perform extra trick train dispatcher service for which he was available on August 21, 1973;

(b) Because of said violation, the Carrier shall now be required to compensate Claimant J. C. Cannon one (1) day's pay at the pro-rata daily rate applicable to trick train dispatchers for August 21, 1973.

OPINION OF BOARD: This dispute is one a series of disputes between these parties involving the exercise of seniority in the filling of vacancies. In this instance the issue is whether or not an extra employe is required to give notice, as provided in Article VI (b) of the applicable Agreement, when he desires to take a position previously assigned to a junior extra Train Dispatcher. Article VI (b) provides, in pertinent part:

"(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."

A study of Section (b) above indicates that it applies to an "assigned employee" and to the "regular incumbent" of the position, both terms inapplicable to the extra train dispatcher involved in this matter. In fact, the only language appearing in the Agreement relative to the availability of extra Train Dispatchers appears in Article IV(h)(1) which states:

"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."

In the instant dispute, Claimant marked off with an insect sting at about 7:00 P.M. August 20, 1973; at approximately 5:01 A.M. on August 21st Claimant marked up as ready for duty. Subsequently, at about 9:20 A.M. Claimant requested placement on the Second Shift vacancy that day as the senior available extra Dispatcher. The Carrier deemed there to be insufficient time to notify the junior Extra Dispatcher of a change in work instructions for that day previously scheduled for 3:00 P.M. Those instructions had been issued to the junior Dispatcher on August 16th.

Carrier argues that the provisions of Article VI(b) are equally as applicable to the extra dispatchers as the regularly assigned men. Further it is contended that a reasonable interpretation of the Agreement would produce this result; it is illogical for there to be no time notice required for an extra employee returning from an absence.

Though this dispute involves a close question, we believe Petitioner's position to be more persuasive. It is obvious that since Article VI(b) relates to regularly assigned Dispatchers there are no specific requirements applicable to extra dispatchers relating to notice after absence. The nature of extra work of this type is day-to-day with no guarantee of any number of days work (see Article IV(h)(1)). Even though six hours notice may upset administrative routines, it does not seem an unreasonable period of time (in the absence of contractual provisions) for which to claim work which Claimant was entitled to by his seniority. We are not, by this Award, attempting to set a time standard for all analagous situations, but in this case it seems appropriate. Carrier's arguments with respect to the penalty were not raised on the property and may not be considered.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1976.