

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24248  
Docket Number TD-23973

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 currently effective Agreement between the parties, Article IV(h)(1) thereof in particular, when on November 18, 1978 it did not call extra train dispatcher H. S. James for a vacancy on the first shift assistant chief dispatcher's position in Atlanta, Georgia.

(b) For the above violation, the Carrier shall now compensate Claimant H. S. James one day's pay at the straight time rate of assistant chief dispatcher.

OPINION OF BOARD: Claimant herein, the senior extra employe, was not called for a vacancy on November 18, 1978. That vacancy occurred at about 4:00 A.M. when the regularly assigned dispatcher marked off sick and the starting time of the assignment was 8:15 A.M. No other extra train dispatchers were available and Carrier used a regularly assigned dispatcher at the time and one-half rate.

Carrier avers that Claimant was not called because his residence was 171 miles from the Train Dispatchers' office in Atlanta and there was insufficient time for him to report at the designated starting time. Petitioner argues that first if promptly called, Claimant could have reported on time and furthermore he should have been called and asked if he could make it or wished to decline.

Carrier's position is that there simply was insufficient time after 4:00 A.M. for Claimant to prepare himself for work (including meals) and drive over 170 miles to report for duty at the designated time and place. Carrier asserts, additionally, that it obviously has the right to expect and demand that its Train Dispatchers report for duty at the designated time and place. It is also argued that Petitioner has failed to meet its burden of proof in this case.

The Organization asserts that Claimant would indeed have had the time to get to his assignment at the specified time. Further it is contended that the burden was upon Carrier since an affirmative defense was asserted, and that burden was not borne. Petitioner also notes substantial disagreement with the assumptions of Carrier with respect to the time required to prepare for work and drive the required distance.

It is noted that Carrier made some judgments with respect to the time required for Claimant to get to work, if he had been called, and on these judgments decided not to call him. As an example, Carrier asserts that it would have taken Claimant an hour to prepare himself before leaving his residence. On

its face, Carrier's judgment is faulty; even though Carrier correctly did not wish to have its employe exceed the statutory speed limit, it had no way of knowing whether or not he could have reported on time. The driving and preparation time were both items which Claimant should have been given the opportunity to assess. This is particularly evident since Carrier has stated that it did not know (not having been furnished the information by Claimant) how much time he would require to report for duty after receiving a call. Under that circumstance Carrier clearly should have called Claimant, offered him the assignment, as provided in the Agreement, and left to him the decision as to whether or not he had enough time. For the reasons indicated, the Claim must be sustained.

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 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: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

