

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30454  
Docket No. TD-30048  
94-3-91-3-480

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
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(Terminal Railroad Association Of  
( St. Louis

STATEMENT OF CLAIM:"1 CLAIMS OF C. I. VOLNER AND R. W. FILGES, 10/9/90

- (a) Carrier violated the effective Schedule Agreement, Article 4(f) and 5(e) thereof in particular, when on Tuesday, October 9, 1990, it failed to call the senior extra Train Dispatcher, C. Volner, to separately fill the 2nd shift Merchants Train Dispatchers position between the hours of 4:45 p.m. and 6:15 p.m., thereby effectively abolishing said position during those hours, and instead required the 2nd shift West Belt Train Dispatcher, R. W. Filges, to assume the responsibilities and perform the duties of the Merchants Train Dispatchers position.
- (b) Because of said violation, Carrier now required to compensate:
  - (1) Senior extra Train Dispatcher C. Volner one (1) day's pay at the rate applicable to that of the 2nd shift Merchants Train Dispatchers position for Tuesday October 9, 1990, and
  - (2) West Belt Train Dispatcher R. W. Filges one and one-half hours pay at the rate applicable to that of the Merchants Train Dispatchers position for Tuesday October 9, 1990, in addition to any other compensation such Train Dispatchers may have earned for such date.

#2 CLAIM OF B. J. HOSP AND A. L. ISENHART, 11/29/90

- (a) Carrier violated the effective Schedule Agreement, Article 4(f) and 5(e) thereof in particular, when on Thursday November 29, 1990, it failed to call senior extra Train Dispatcher B. J. Hosp, to separately fill the 2nd shift West Belt Train Dispatcher position between the hours of 6:40 p.m. and 11:15 p.m. thereby effectively abolishing said position during these hours, and instead required the 2nd shift Merchants Train Dispatcher, A. L. Isenhardt to assume the responsibilities and perform the duties of the West Belt Train Dispatcher position, in addition to those of the Merchants Train Dispatcher position.
- (b) Because of said violation, Carrier now be required to compensate:
  - (1) Senior Train Dispatcher B. J. Hosp 4 hours at one and one-half times the rate applicable to the West Belt Train Dispatcher position for November 29, 1990, and
  - (2) Merchants Train Dispatcher A. L. Isenhardt 4 hours 35 minutes at the West Belt rate for November 29, 1990, in addition to any compensation such Train Dispatchers may have earned for such date."

FINDINGS:

The 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 waived right of appearance at hearing thereon.

#1 - Claims of C. I. Volner and R. W. Filges, 10/9/90

At approximately 4:45 P.M., Merchants Train Dispatcher A. L. Isenhardt was informed by Carrier's Trainmaster that he had been selected for a random drug test in accordance with U. S. Department of Transportation - Federal Railroad Administration (FRA) regulations. Mr. Isenhardt was transported to the testing site, returning to the Dispatcher's Office at 6:15 P.M. During Mr. Isenhardt's ninety minute absence, the "West Bend" Train Dispatcher, R. W. Filges, was the only second shift Dispatcher on duty.

The Organization protested Carrier's action maintaining that Mr. Isenhardt's absence constituted a "reduction in force" which created "extra work." The Organization asserted that the position should have been "separately filled" by the senior extra Dispatcher and that Train Dispatcher Filges was entitled to "one and one-half hours pay at the rate applicable to that of the Merchants Train Dispatcher's position" for performing "two (2) jobs."

Carrier denied the claim stating that during Mr. Isenhardt's absence, the remaining second shift Train Dispatcher on duty "filled in" on Mr. Isenhardt's position on a "need-basis." Carrier maintained that this is "the normal and customary procedure when one of the Dispatchers is out of the office," and denied any violation of the Agreement. Finally, according to Carrier, during the time Mr. Isenhardt was away from his job, he was "under pay," no "extra work" was performed, and no "reduction in force" occurred.

#2 - Claims of B. J. Hosp and A. L. Isenhardt

At approximately 6:40 P.M. on November 29, 1990, Carrier Trainmaster Leehy removed second shift West Belt Train Dispatcher K. E. Valedajo from service for disciplinary reasons. Carrier tried unsuccessfully to call Mr. J. H. Ward, to cover the "extra work" occasioned by Mr. Valedajo's absence. However, Mr. Ward could not be reached and, according to Carrier, the next senior extra Dispatcher, Mr. Hosp, was ineligible to be called under the Hours of Service Law. The Carrier therefore utilized the other on-duty Dispatcher, Mr. Isenhardt, to assume Mr. Valedajo's duties "if a need arose."

The Organization protested Carrier's action asserting that senior Train Dispatcher B. J. Hosp was "available to work on an emergency basis, to fill the vacant position at 7:00 P.M., under Section 63(c) of the Hours of Service Law, and should have been called to work" in Mr. Valedejo's stead. The Organization further asserted that Train Dispatcher Isenhardt should be "appropriately compensated for the 4 hours and 35 minutes" during which he "was assigned Mr. Valedejo's duties in addition to his own."

Carrier denied the claim submitting that: "Due to the Hours of Service Law, the only available Dispatcher to work this position was Mr. J. H. Ward. Carrier attempted to contact Mr. Ward at 6:51 P.M., but was unable to reach him. Carrier assessed that Mr. Hosp had worked from 11:00 P.M. to 7:00 A.M., and could not have been called for said position due to the Hours of Service Law. Finally, Carrier argued that even if, arguendo, Mr. Isenhardt performed any duties as a result of Mr. Valedejo's absence, he was "compensated accordingly."

With regard to Claim #1, the record does not show that any Article 4 (f) "extra work" was needed by Carrier or performed by Mr. Filges during Mr. Isenhardt's ninety minute absence from the West Bend Dispatcher position. Nor can the ninety minute diversion of an employee for a FRA-required test be considered a "reduction in force" or an "abolishment" of the position within the plain English meaning of those terms in Article 5 (e) of the Agreement. Accordingly, we find no support in fact or in contract for the claims presented in Claim #1.

Turning to Claim #2, we are not persuaded that the disciplinary removal of Mr. Valedejo from service constituted a "reduction in force" or an "abolishment" of the West End Dispatcher position on the date in question. To the contrary, Carrier did not abolish the position but, rather, attempted unsuccessfully to cover it by calling an "extra dispatcher," J. H. Ward, to fill Mr. Valedejo's vacancy. Carrier defends its failure to continue calling B. J. Hosp under Article 4 (f) on grounds that Claimant Hosp was "outlawed" under the Hours of Service Law. That is an affirmative defense to a prima facie violation of Article 4 (f) and we are not persuaded that Carrier has carried its burden of proof. Accordingly, we shall sustain that portion of Claim #2 which seeks a recovery for Mr. Hosp. Regarding the additional claim for Mr. Isenhardt, there is no showing that he actually performed any "extra work" on claim date.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

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 13th day of September 1994.