

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30779
Docket No. TD-30007
95-3-90-3-401

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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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"(A) CSX Transportation, Inc. (Carrier) violated Article 5-I (Order of Call) of its Train Dispatchers' basic schedule Agreement applicable in the Jacksonville Centralized Train Dispatching Center (JCTDC) on August 30, 1990, when it failed to call regular assigned Dispatcher E. R. Thomas for overtime on his rest day for Position 4U00-R41 beginning at 2300 hours.

(B) Because of said violation, the Carrier shall now compensate Claimant E. R. Thomas for eight (8) hours pay for lost work opportunities applicable to the JCTDC rate of \$165.00 for August 30, 1990."

FINDINGS:

The Third 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.

Claimant was regularly assigned as a relief Train Dispatcher at the Dispatching Center at Jacksonville, Florida. Claimant works Friday through Tuesday with Wednesday and Thursday rest days. Claimant got off Tuesday, August 28, 1990 and was scheduled to

return on his regular relief position at 7:00 A.M., Friday, August 31, 1990.

On Thursday, August 30, the regular incumbent of Position 4U00-R41 (starting time of 11:00 P.M.) was absent and a temporary vacancy resulted. It is not disputed that Carrier attempted to fill the vacancy at the straight time rate, but discovered that there were no "available" employees to fill the position. Carrier ultimately required a junior Train Dispatcher to fill the vacancy at the rate of time and one-half.

The Organization filed its claim alleging that Carrier violated Article 5(e) Filling Positions as well as Article 5(i) Order of Call of the Agreement when it did not call Claimant for the overtime assignment on August 30. The Organization argued that Claimant had "submitted a request for any overtime his seniority entitled him, and was home and available to work on Position 4U00 on Thursday, August 30."

In its reply to the Organization, Carrier maintained:

"As you stated in your claim, Mr. Thomas got off Tuesday August 28, 1990 at 2300 hours with rest days of Wednesday and Thursday. Mr. Thomas was scheduled to return on his regular relief position 0700 Friday August 31, 1990. The vacancy in question occurred 2300 August 30, 1990. In accordance with Article 5-I Mr. Thomas could not have protected the vacancy August 30, 1990 and then protect his regular relief position 0700 Friday August 31, 1990 without a conflict under the Hours of Service Act."

In subsequent correspondence, the Organization noted that the junior Train Dispatcher "also was due to work 0700 Friday August 31, 1990, and was used for this overtime on his rest day instead of Dispatcher Thomas. Mr. Thomas could have as well been relieved and should have been called for this overtime as required." Carrier reiterated its denial maintaining that even if the junior employee was also "unavailable" for service, there is "no requirement that Carrier call unavailable employees in seniority order." Further correspondence between the Parties failed to resolve the dispute which is now before the Board for adjudication.

Due to the Hours of Service Act, as provided for in Article 5(i) Claimant was not considered available for overtime service because it would have prevented him from working his regular 7:00 A.M. assignment on Friday, August 31, 1990. The same was true of

the junior Dispatcher who was used to fill the vacancy. However, once Carrier exhausted the method outlined in Article 5(i) for the distribution of overtime, there was no further contractually enforceable requirement that overtime be assigned on a seniority basis. For purposes of Article 5(i) neither the senior nor the junior employee was "available" for the assignment. Under these particular circumstances, once Carrier satisfied the parameters set forth in Article 5(i) it had the managerial right to fill the position in the exercise of reasonable discretion. Nothing in this record indicates an abuse of discretion or effectively rebuts Carrier's representation that it filled the vacancy in a manner causing the least disruption to its operations. Whether it would have been more "equitable" or "fair" to call the senior employee, is not something which this Board can decide. See Third Division Award 20383. Our jurisdiction is limited to determining disputes concerning the interpretation and enforcement of contractual obligations. No violation of either Article 5(e) or Article 5(i) of the Agreement is shown on this record. Based on the foregoing, this claim is denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.