

Public Law Board No. 3820

36

PARTIES
TO
DISPUTE:

American Train Dispatchers Association
and
Seaboard System Railroad

STATEMENT
OF
CLAIM:

"Claim of Train Dispatcher T. J. Fabrikant submitted under New York Dock Conditions for guarantee payments account being displaced from Regular Train Dispatcher Assignment as a result of Coordination of the Savannah-Waycross and Birmingham Train Dispatching offices effective June 1, 1983."

"Claim for months and amounts as follows:

July 1983	\$ 92.19
September 1983	632.35
October 1983	92.19
November 1983	1,372.51
December 1983	307.83
January 1984	731.54
February 1984	1,693.55"

FINDINGS:

This dispute arises under the "New York Dock" labor protective conditions and the parties' implementing agreements of May 6, 1983. Pursuant to Section 4 of the New York Dock conditions, Carrier served notice

of February 14, 1982 of its intent to coordinate certain train dispatching territories, functions and work incidental thereto from the Savannah and Waycross offices to Birmingham and other locations. Implementing agreements were signed by the parties on May 6, 1983 and the coordination became effective on June 1, 1983.

Claimant was a regularly assigned train dispatcher in Carrier's Savannah office. It is Petitioner's position that he remained in that capacity until June 14, 1983 when he was displaced by a senior train dispatcher as a result of the coordination of June 1, 1983. Accordingly, in Petitioner's view, claimant is entitled to the compensation he seeks under Section 5(a) of the New York Dock Conditions.

The record establishes that prior to June 1, 1983, the coordination effective date, regular assigned train dispatchers at Savannah and Waycross, including claimant, were offered in seniority order the opportunity to fill four dispatcher positions transferred to Birmingham. That offer was made in accordance with the express terms of an implementing agreement of May 6, 1983; Petitioner as well as Carrier committed themselves to the provisions of that agreement.

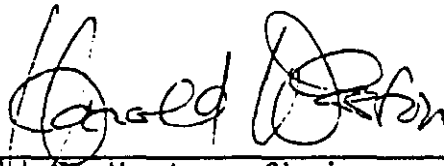
We also find that claimant was well aware prior to June 1, 1983, that the coordination was about to take place and that he would inevitably be soon displaced in the chain of displacements that would follow. Nevertheless, claimant decided not to apply for the Birmingham train dispatcher position which had a higher rate of pay than his position in Savannah. As a result, he was bumped off his position. He lacked sufficient seniority to obtain a regular

position at Savannah and was placed, at his election, on the extra board in Savannah since no opening existed at Birmingham after June 1, 1983.

Viewed realistically, this record establishes that claimant's displacement did not flow directly from the "transaction" in this situation, namely, the coordination of June 1, 1983, but resulted from his failure to take reasonable steps and precautions to exercise seniority and protect his status. He knew of the options that were available to him and we are not impressed by his plea that he did not have to protect his rights as a regular assigned dispatcher until June 14, 1983 when no Birmingham train dispatcher position was still open.

AWARD: Claim denied.

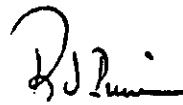
Adopted at Jacksonville, Florida, August 24, 1985.



 Harold M. Weston, Chairman



 Carrier Member



 Employee Member
 Dissent Attached

EMPLOYEE MEMBER'S DISSENT TO AWARD No. 2
PUBLIC LAW BOARD No. 3820

The award of the majority is based on the erroneous premise that Claimant was required to apply for a position in Birmingham under the terms of the implementing agreement of May 6, 1983.

These terms were for the purpose of affording voluntary transfers. Claimant was not required to transfer to a distant location. He retained employment in Savannah.

The award does not draw its essence from either the New York Dock Conditions or the implementing agreement, and thus exceeds the authority or jurisdiction of Public Law Board No. 3820. See Brotherhood of Railroad Trainmen vs Central of Georgia Railway, U.S.C.A. (5), 415 F2d. 403.



R. J. Irvin
Employee Member

Send to: Clarence M. McIntosh, Administrator
Railway Labor Executives' Association
400 First Street, N.W.
Washington, D.C. 20001
(Attach Copy of Decision and Award)

EMPLOYEE PROTECTION ARBITRATION REPORT

1. Date of Award: August 24, 1985 [P.L.B. 3820, Award No. 2]

2. ICC Employee Protective Provisions, Finance Docket or
Abandonment No. F.D. 30053

(check one) ☒ Oregon Short Line III
☒ New York Dock
☐ Norfolk & Western/Mendocino Coast
Other: _____

3. Type of Arbitration involved:

(i) ☐ Under Article 1, Section 4, or
☒ Under Article 1, Section 11,

(ii) Issue(s) involved (if Section 11 arbitration, what
sections were in dispute):

Whether claimant was required to apply for position at
distant location in order to maintain eligibility for
displacement allowance.

4. Arbitration between:

Carrier: Seaboard System Railroad

Carrier Official: _____

Organization American Train Dispatchers Association

Organization Representative R. J. Irvin

5. Arbitrator: Harold M. Weston

Address: 30 Rockefeller Plaza; Suite 4320

New York, N.Y. 10112

(*) Daily Charge: _____ Total Charge: _____

(a) How was arbitrator chosen: (check one)

☐ Appointed by NMB
☒ Selected by Agreement
☐ Other: _____

(*) - Not available as of 9/18/85

(b) How do you rate arbitrator's performance:

(i) Length of time arbitrator took to render decision: 86 (days after close of hearings/briefs, whichever later)

(ii) Did arbitrator appear to understand case and arguments: ☐/Yes ☐/No ☒/Not Clear

(iii) Based on evidence in record and/or presented, Decision was: (check one)

☐ Good Decision which was fair to both parties;

☐ Decision in organization's favor which could just as easily have been decided in carrier's favor;

☐ Split decision which attempted to satisfy both organization and carrier;

☒ Decision in carrier's favor which could just as easily have been decided in organization's favor; or

☐ Award in favor of carrier which ignored law and/or facts.

(iv) Was arbitrator obviously biased in favor of carrier or organization: ☒/Yes ☐/No ☐/Not Clear

(v) From Union point of view, case was:
☐/Won ☒/Lost ☐/Split

(c) Would you recommend arbitrator be selected by labor for an employee protection related arbitration:
(check one)

☐/Yes ☐/Undecided ☒/No

☐/Avoid at all costs

6. Additional comments about decision or arbitration (demeanor; attitude and temperament; etc.).

Implementing agreement provided for voluntary transfer to
positions at Birmingham. Award held that transfers were
required.

Name of Preparer: G. J. Nixon, Jr.

Address: 1401 South Harlem Avenue, Berwyn, IL 60402

Title: Director of Research

Date: September 18, 1985