

Public Law Board No. 3820

38

PARTIES  
TO  
DISPUTE:

American Train Dispatchers Association  
and  
Seaboard System Railroad

STATEMENT  
OF  
CLAIM:

"Mr. J. F. Fey, Jr., as a result of the transaction of June 1st, 1983...has been placed in a worse position with respect to his compensation."

FINDINGS:

In Award No. 2, we considered the claim of a regularly assigned train dispatcher at Carrier's Savannah, Georgia, offices who was displaced subsequent to the June 1, 1983 coordination of train dispatching functions from the Savannah and Waycross offices to Birmingham and other locations. As in that case, the present dispute arises in Savannah under the New York Dock Conditions and the parties' implementing agreements.

However, in this instance, unlike the situation in Award No. 2, claimant was an extra employee protecting extra train dispatcher work at Savannah.

As Petitioner contends, claimant's standing on the extra board was reduced when displaced regularly assigned dispatchers were forced on to the extra board after the June 1, 1983

coordination. The record indicates that, as a result, claimant's compensation was adversely affected in the months of June, July and August 1983. New York Dock defines a "Displaced employee" as (see Appendix III Section 1(b):

"An employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions."

Petitioner reasons that although claimant was not displaced from the extra board, he is entitled to relief under New York Dock and the implementing agreements since he suffered a loss in compensation just after the coordination had taken place.

It is Carrier's view that extra employees are clearly not entitled to protective benefits under New York Dock. In its judgment, the applicable agreements and the record in this case support that position.

Contrary to Carrier's assertions, the language used in New York Dock does not unambiguously exclude extra board employees from all protective benefits coverage. While Sections 6 and 7 of New York Dock as well as Sections 3(f) and 5(a) of the parties' implementing agreement apply only to regularly assigned employees, they pertain to certain specific benefits over and above the displacement allowance provided by Section 5 of New York Dock. It can reasonably be argued that, in the light of New York Dock Section 1(b)'s definition of a displaced employee, Section 5 of that Agreement is applicable to extra board employees even when their boards have not been abolished.

On this property, however, the situation is affected by Article IV (h) (1) of the Schedule Agreement. It reads as follows:

"Nothing in this Article IV (h) (1) shall be deemed as creating any guarantee of any number of days' work for extra train dispatchers."

That Article governs the conditions under which extra work is protected and has not been abrogated by New York Dock Conditions or the Implementing Agreement. The Organization as well as Carrier stand committed to its terms and claimant must be held to have been aware of them when he accepted extra board work both before and after New York Dock Conditions went into effect.

In connection with a similar coordination under New York Dock, this time from Birmingham to Atlanta and other locations, the Organization proposed on November 10, 1984, that an arbitrated implementing agreement contain the following provision:

15. "In order to eliminate any cause for dispute, such as we have experienced in the past, we wish to specifically explicate that extra train dispatchers placed in a worse position with respect to compensation and working conditions will be afforded wage protection and retention of fringe benefits, including sick leave in accordance with the train dispatchers' agreement."

While the proposal may have been made only to settle the controversy, it does lend some support to Carrier's contention that it shows that the agreements in force could not be relied upon to give extra employees the protective benefits in question.

At any rate, on this property, extra train dispatchers are not guaranteed any number of days' work. No valid basis exists therefore for the present claim.


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. 4  
PUBLIC LAW BOARD No. 3820

The award of the majority is erroneously based on Article IV(h)(1) of the Schedule Agreement, which does not control the instant claim for benefits under the clear provisions of the New York Dock Conditions.

The Board has no jurisdiction to interpret the Schedule Agreement.

The award does not draw its essence from the New York Dock Conditions, 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 F.2d. 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. 4]

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 extra Train Dispatcher who was placed in a worse  
position with respect to compensation as a result of the  
transaction is entitled to displacement allowances

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.).

Award based on schedule agreement provision that extra train

dispatchers are not guaranteed any number of days work, rather  
than NYD-II provisions concerning eligibility for displacement

allowances as a result of a transaction

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

Address: 1401 South Harlem Avenue, Berwyn, IL 60402

Title: Director of Research

Date: September 13, 1985