

Public Law Board No. 3820

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PARTIES
TO
DISPUTE:

American Train Dispatchers Association
and
Seaboard System Railroad

STATEMENT
OF
CLAIM:

"Claim of Train Dispatcher K. G. DeMarte submitted under New York Dock Conditions for guarantee payments account being displaced from regular train dispatcher assignment as a result of coordination of the Raleigh, North Carolina and Erwin, Tennessee dispatching offices."

FINDINGS:

The present case concerns substantially the same basic situation that was before us when we issued denial Award No. 2. The locations and claimants differ.

Carrier served notice on February 14, 1983, pursuant to Article I Section 4(a) of the New York Dock employee protection conditions of its intention to coordinate certain train dispatcher functions at Raleigh, North Carolina and Erwin, Tennessee. The implementing agreement reached by the parties on May 4, 1983 provided for the coordination and made the New York Dock protective conditions applicable to the transaction.

The May 4, 1983 implementing agreement also provided that four dispatchers holding regular assignments in Raleigh on the

date of the agreement may transfer to the Train Dispatching office at Erwin. That agreement also provides that if four dispatchers at Raleigh do not elect to transfer to Erwin, the unfilled positions will be offered to other dispatchers in accordance with certain prescribed procedures.

Claimant, a regular assigned train dispatcher at Raleigh with a November 24, 1979 dispatcher seniority date, was in line for a regular train dispatcher assignment at Erwin.

On May 10, 1983, notice was posted in the Raleigh office addressed to claimant and other dispatchers, notifying them of their right to apply for the four new positions at Erwin. The notice also made it clear that time was of the essence since the closing date of the offer was stated in the notice to be May 15, 1983 at 4 p.m. The dispatchers were instructed to indicate on a form supplied with the notice whether or not they desired the train dispatcher position at Erwin.

Claimant did not express a desire to obtain a position at Erwin and on May 27, 1983, was displaced. She then was placed in unassigned status. The record clearly establishes that her displacement resulted from her failure to bid on an Erwin position that was available and realistically was not attributable to "the transaction" in question, namely by the coordination. The fact that no position at Erwin was open on May 27, 1983, is not helpful to her case. She ignored the May 15 deadline clearly set forth in Carrier's notice of May 10, although she was aware of her dispatcher seniority standing and knew that she would soon be displaced if she did not

avail herself of the Erwin opportunity.

Her letters to Carrier during the month of May 1983 do not express a desire to obtain the Erwin position. Nor do they serve to build up a case for other protective benefits.

The claim will be denied. The record does not show that claimant was adversely affected as a result of a transaction within the meaning of New York Dock Conditions.

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. 3
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The award of the majority is based on the erroneous premise that Claimant was required to apply for a position in Erwin under the terms of the implementing agreement of May 4, 1983.

These terms were for the purpose of affording voluntary transfers. Claimant was not required to transfer to a distant location. She retained employment at Raleigh.

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 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. 3]
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 Erwin. Award held that transfers were required.

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

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Title: Director of Research

Date: September 18, 1985