

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6399**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

and

**NORFOLK SOUTHERN RAILWAY COMPANY**

)  
) Case No. 9  
)  
) Award No. 9  
)

Martin H. Malin, Chairman & Neutral Member  
J. Dodd, Employee Member  
D. L. Kerby, Carrier Member

Hearing Date: January 23, 2004

**STATEMENT OF CLAIM:**

Claim on behalf of K. Stapleton for 240 straight time hours and 16 overtime hours worked by Eastern Region seniority tamper operator M. R. Scherer on the Columbus to Cincinnati main line of the Northern Region seniority district on various dates between April 8 and May 16, 2002.

(Carrier File: MW-FTW-02-32-LM-183)

**FINDINGS:**

Public Law Board No. 6399, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Beginning April 8, 2002, and continuing through May 16, 2002, Carrier assigned a tamper operator with seniority established on the Eastern Seniority District and who had no seniority on the Northern Seniority District to perform work on the Columbus to Cincinnati main line within the Northern Seniority District. Claimant holds seniority on the Northern Seniority District.

Our holdings in Case No. 2, Award No. 2 control the instant case. In Case No. 2, Award No. 2, we held that Rule 18 authorizes transfers across seniority boundaries for temporary service. We further held that transfers that last up to thirty days in duration are presumptively for temporary service while transfers that last more than thirty days in duration are presumptively suspect. In the latter case, Carrier must come forward and demonstrate why such a transfer was for temporary service despite its duration.

As in Case No. 2, Award No. 2, we are presented with a transfer that lasted more than thirty days in duration. In Case No. 2, Award No. 2, Carrier came forward with an explanation that we accepted because it was not contested on the property. The record in the instant case contains no explanation that would justify a conclusion that the transfer was for temporary service despite lasting more than thirty days. Accordingly, the claim must be sustained.

Therefore, we turn to the question of remedy. Carrier contends that no monetary remedy is appropriate because Claimants were fully employed during the period in question. However, numerous awards establish that where Carrier assigns employees work in derogation of the seniority rights of the Claimants, the Claimants are entitled to monetary compensation for the lost work opportunities. Such is the case here. However, during handling on the property, Carrier asserted that Claimant was on vacation on May 6 - 9, 2002, and therefore unavailable for work on those dates. The Organization did not dispute that Claimant was on vacation on those dates; therefore we accept this as fact and hold that Claimant, due to his unavailability on May 6 - 9 is not entitled to monetary compensation for those dates. Subject to this caveat, the claim for monetary compensation is sustained.

#### AWARD

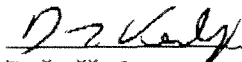
Claim sustained in accordance with the Findings.

#### ORDER

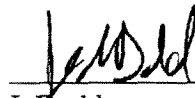
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman



D. L. Kerby,  
Carrier Member



J. Dodd  
Employee Member

Dated at Chicago, Illinois, June 6, 2004.