

PUBLIC LAW BOARD NO. 5345

Award No. 17

BLE File No. AD7-90-12
SSW File No. 16303

Parties: Brotherhood of Locomotive Engineers
to and
Dispute St. Louis Southwestern Railway Company
(Southern Pacific Transportation Company)

Statement

of Claim: Claim of Engineer T. L. Null for extra board guarantee due him for the month of August, September, and October 1989, while assigned to the Tyler guaranteed extra board.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing the Board therefor.

The Claimant Engineer, in August of 1989, was assigned to the Tyler Engineer's Extra Auxiliary Board. This is a guaranteed extra board for which the guarantee is applicable whether or not they perform service. The Board is set up on a last in, first out basis.

Claimant was attending law school in Houston. When called for work, he would lay off. The school began on August 20, 1989. Claimant's guarantee after August 19, 1989 was denied. The Road Foreman, on the Superintendent's behalf, declined the guarantee and advised the Claimant that he should apply for a leave of absence.

The Claimant requested a leave of absence on October 1, 1989 for approximately 45 days. The Road Foreman denied the request on the basis that Carrier's leave of absence policy did not allow a leave of absence for less than six (6) months. The Claimant failed to request another leave of absence and continued to miss calls.

On December 14, 1989, the Claimant attempted to mark-up, and was advised that he had been removed from the Tyler's Engineer Extra Board because of the fact that he was attending college and did not protect his assignment.

The BLE asserts that because of the Carrier's purchase of the Old Rock Island line and the 1983 diversion of traffic from the Corsicanna Route to the newly acquired Tucumcari route resulted in a surplus of engine service employees at Tyler. The Claimant was thereby afforded an opportunity to complete his higher education. He discussed this matter with former Superintendent Cribbs and his BLE

Local Committee. The Claimant made a request for leave of absence which was approved by Superintendent Cribbs.

Such absence by the Claimant, of course, forfeited any labor protection due to him by the acquisition of the Rock Island. He did this for several semesters. Each summer and during the holidays he would mark up for work.

Addendum No. 7, signed July 26, 1988 flows from the 1986 National Agreement, side letter No. 20, for the May 19, 1986 BLE National Agreement. Thereunder, Article V, Section 3, Engineers have the right to be assigned to the auxiliary board and the right to take another job which would not conflict with work, the hours of service, and there can be no offset for outside wages.

The Committee raised the question of time limits by asserting that such was discovered during on-property conference because the claims were never denied thereby violating Article 41-3.

The Carrier asserts that the claim should be dismissed because they failed to state a claim. The Claimant returned to college in August 1989 and when called for service he laid off. Claimant was advised that he was to request a leave of absence for six months, and he failed to request a leave of absence. Therefore, after the school holidays began the Claimant attempted to mark up in December his absences and failure of a leave request made him unavailable to be on the board.

Carrier failed to show it has such a 6 month leave of absence policy. Further, the Board's review of the record shows that even if the time limit argument were overlooked that Addendum No. 7, Article III, Section 6, reads:

"Other non-railroad employment while on the Auxiliary Board is permissible so long as no conflict of interest, work schedules or the Hours of Service Act. There shall be no offset or outside earnings."

If outside employment is permissible so is education. Article 71-1 (Right to Hearing), in part, reads:

"No Engineer shall be...suspended without just or sufficient cause."

When the above rules are applied to the facts and circumstances in this case, it causes the claim to be sustained.

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Award: Claim sustained.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

R. E. Dean

R. E. Dean, Employee Member

H. L. Goldstein

M. L. Goldstein, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued September 24, 1993.