

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

"Organization"

VS.

CONSOLIDATED RAIL CORPORATION

"Carrier"

Case No. 1583

Award No. 1583

STATEMENT OF CLAIM

Claim of Engineer T. L. Hilton dated December 24, 1990 for eight (8) hours straight time Holiday Pay as prescribed by Article G-c-5, while Assigned to the Sharonville Yard Engineers Extra Board.

The claim of Engineer T. L. Hilton dated January 1, 1991, for eight (8) hours straight time Holiday Pay as prescribed by Article G-c-5, while Assigned to the Sharonville Yard Engineers Extra Board.

BLE File No: ABC-E-80-901-91
System Docket No: CRE-14748

OPINION OF THE BOARD

Claimant was assigned to the Engineers Yard Extra Board at Carrier's Sharonville Yard from December 5, 1990 until January 2, 1991. There is also at that location a Road Engineers Extra Board to cover road vacancies.

At 5:00 p.m. on December 23, 1990, Carrier attempted to call Claimant for service on Train CSXO-4X, a road freight train, but was unable to contact Claimant at two telephone numbers on record with Carrier. On December 24 and 25, 1990, Claimant was available, but was not called for service. On January 1, 1991,

Claimant was available on the extra list, but was not called for service.

At 11:00 a.m. on January 2, 1991 Claimant was cut from the Sharonville Yard Engineers' Extra List. On that date, Carrier attempted to contact Claimant at 3:31 p.m., 3:34 p.m., 6:13 p.m. and 6:16 p.m. at his two telephone numbers on record to notify him of his displacement. Each of these attempts to contact Claimant proved futile. Carrier finally contacted Claimant at 7:20 p.m. on January 2. After being notified of his displacement, Claimant attempted to exercise seniority to yard assignment YSMO-21, reporting on duty at 4:00 p.m. at Moraine, Ohio, but Carrier mistakenly did not permit him to do so. Rather, Carrier permitted Claimant to displace to a Reserve Engine Service Employee position at Cincinnati, Ohio. At 8:21 p.m. on the following day, January 3, Claimant was finally permitted to exercise seniority to yard assignment YSMO-21. Claimant subsequently filed separate claims seeking holiday pay for December 24, 1990 and January 1, 1991.

Article G-c-5 (Holidays) of the Agreement reads in relevant part as follows:

(g) To qualify, an extra yard engineer must:

(1) perform yard service on the calendar days immediately preceding and immediately following the holiday, and be available for yard service the full calendar day on the holiday, or;

(2) be available for yard service on the full calendar days immediately preceding and immediately following the holiday and perform yard service on such holiday, or;

(3) if an extra yard engineer cannot qualify under paragraph (g) (1) or (g) (2), then in order to qualify he must be available for yard service on the full calendar days immediately preceding and immediately following the holiday, or perform yard service on any one or more of such days and be so available on the other day or days.

* * *

Note 2: An extra yard engineer shall be deemed to be available if he is ready for yard service and does not lay off of his own accord, or if he is required by the Corporation to perform other service.

* * *

Article Y-s-2 (Starting Times) states in relevant part as follows:

(c) Where three eight hour shifts are worked in continuous service, the time for an assignment on the first shift to begin work shall be between 6:30 a.m. and 8:00 a.m., the second shift, 2:30 p.m. and 4:00 p.m., and the third shift, 10:30 p.m. and 12:00 midnight.

Article Y-x-1 (Marking Up and Calling Yard Extra List) states in relevant part as follows:

(a) Engineers on yard extra lists shall be called as nearly as possible 2 hours before they are required to report for duty. Where local conditions warrant, the local Chairman or Local Chairmen and the designated Labor Relations officer may agree to a different calling time, subject to the approval of the General Chairman and the highest appeals officer of the Corporation.

* * *

The Organization argues as follows: Claimant was entitled to receive holiday pay for December 24, 1990 and January 1, 1991 pursuant to the provisions of Article G-c-5, Paragraph (f). Claimant was available to cover any yard vacancies on December 23

and January 2 as required by the rules. On December 23, Claimant was called for a road assignment, an assignment the Claimant was not required to cover. Moreover, pursuant to Article Y-s-2, shifts were to begin at specified times, and Claimant was always available during the two hours prior to the time specified for the start of each shift. In addition, Carrier's own records establish that on January 2 Claimant was displaced at 11:00 a.m., yet Carrier never attempted to contact him until 3:31 p.m. Thereafter, Claimant was mistakenly denied the opportunity to bump to the only other yard assignment his seniority entitled him to hold. Clearly, Carrier was looking for reasons not to grant Claimant holiday pay.

Carrier argues as follows: Claimant is not entitled to holiday pay under the provisions of Article G-c-5(g). Carrier records verify that at 5:00 p.m. on December 23 Claimant was not available for service at either of his two telephone numbers of record. Thus, Claimant was not available for service on the full calendar day immediately preceding the December 24, 1990 holiday as required by the Agreement. The fact that Carrier attempted to reach Claimant to perform road freight service instead of yard service does not mitigate the fact that he was unavailable for service, as pursuant to Note Two of Article G-c-5 (g) Claimant needed to be available for yard service or "other service". Moreover, Claimant would not have qualified for holiday pay on January 1, 1991 even if he had been permitted to exercise seniority to yard assignment YSMO-21 at 7:20 p.m. on January 2,

1991, as that assignment already had reported for duty at 4:00 p.m..

The Board has determined that the claim must be sustained.

The Board concludes that Claimant was "available" on December 23 as required by Article G-c-5. The fact that Carrier could not reach him on a single occasion on December 23 at 5:00 p.m., well past the start of second shift and long before the start of third shift, for a road assignment does not justify denying him holiday pay for which he was otherwise entitled as a member of the Yard Extra Board. Moreover, while it is true that on January 2 Claimant was cut from the Sharonville Yard Engineer's extra list, that occurrence happened at 11:00 a.m. If Carrier had promptly notified Claimant, rather than waiting some four and one half hours, Claimant could have exercised seniority to yard assignment YSMO-21, which did not report for duty until 4:00 p.m. Accordingly, based upon the totality of unique circumstances present in this case, the claim will be sustained.

AWARD

The claim is sustained. All money owed to be paid within thirty (30) days.

R. W. Godwin
R. W. Godwin,
Organization Member

SR Friedman
~~J. F. Glass~~ SR FRIEDMAN
Carrier Member

S E Buchheit
S. E. Buchheit,
Neutral Member .