PUBLIC LAW BOARD NO. 3107

AWARD NO. 5

CASE NO. 5

ORG. FILE: TB-22-81-RW

CAR. FILE: 012-974-RYA

PARTIES TO DISPUTE:

Terminal Railroad Association of St. Louis

and

Railroad Yardmasters of America

STATEMENT OF CLAIM

"Claim on behalf of Extra Yardmaster T. Benson for a minimum pro rata day's pay for date of June 25, 1981, account his guarantee while attached to the Yardmasters' Extra Board being improperly offset for missing a call to fill a vacancy on that date after the board was marked."

OPINION OF BOARD

The issue here is the interpretation of the following paragraph of the Agreement between the parties herein:

"When vacancies occur after board-marking time, Yardmasters will not be considered unavailable for such vacancies if they can be reached three hours prior to the starting time of the vacancy involved."

In this instance, the claimant was not called during the daily board-marking time (between 11:45 A.M. and 1:00 P.M.).

A vacancy occurred later in the day; namely, at 10:00 P.M. The carrier attempted to contact the claimant at 7:32 P.M., 7:42 P.M., and 7:39 P.M. by phone and on the claimant's beeper, but to no avail.

The Carrier has determined that its failure to be able to contact the claimant means that he was unavailable for the assignment and, therefore, under the Agreement he should be penalized for one day as a result thereof.

The Organization claims this is a misinterpretation of the Agreement. It alleges that the claimant must be available only during the board-marking time and is not required to be available at any other time; that the sentence means that if the Carrier is able to contact the employee outside of the hours of the board-marking time, then that employee must hold himself available for the work.

Since the parties to the Agreement apparently had different intentions in executing the document, this Board is called upon to interpret the language and its applicability to this set of facts.

In this dispute, the Organization has explained its understanding of the language in question both on the property and in its submission before this Board.

The Carrier has been less expansive in the reason for its denials of the claim, but asserts that since it could not reach the claimant within the three hours prior to 10:00 P.M., it must, therefore, consider the claimant unavailable.

We must conclude that the Carrier feels that the sentence is clear on its face. This Board does not find it so.

This Board is called upon in many instances to determine the application of an Agreement to circumstances which were not necessarily predicted at the time the Agreement was entered into. This Agreement, however, does not fit that category and must be presumed to have been agreed to in order to resolve the very issue before us.

Unfortunately, it isn't clear what was intended by the sentence and is subject to more than one interpretation.

From the record, the interpretation of the Carrier would require the claimant to be constantly available for any unexpected vacancy at all times. This, in effect, is extending board-marking time beyond the period which has been established between the parties. If this were the intention of the Carrier, then the language of the Agreement should have been more explicit to cover this intention. Absent language which is more specific than the language in question, this Board will determine that the effect of this language is that the claimant should be available during the standard board-marking time. If he is contacted by the Carrier at other times outside of the hours of the board-marking time and this occurs during the three hours prior to the starting time of the vacancy involved, then he is subject to call by the Carrier at that time.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Claim sustained.

2. Carrier shall comply with this Award within thirty (30) days of the effective date hereof.

Carlton R. Sickles
Chairman and Neutral Member

O. R. Bailey
Carrier Member (Dissenting)

John K. Brown
Organization Member

JUL 21 1983

DATE

CARRIER MEMBER'S DISSENT

TO

AWARD NO. 5 - PUBLIC LAW BOARD NO. 3107

The decision rendered by the majority in this Award is incorrect in that it ignores the clear language of a Letter Agreement dated January 10, 1980, which was entered into at the Organization's request to liberalize the requirements of a Memorandum of Agreement dated April 10, 1975, establishing a central boardmarking procedure and consolidating six former seniority districts, in consideration of which the Carrier agreed to guarantee all yardmasters assigned to the system extra board, thus established for a full calendar month, minimum earnings equal to the current monthly salary of a yardmaster and, if not attached for a full calendar month, the guarantee to be prorated on the basis of the actual number of days assigned.

The April 18, 1975 Memorandum of Agreement provides, and the Railroad Yardmasters of America is well aware of the fact, that to the extent possible, all known yardmaster vacancies as of 11:45 a.m. for the second and third shifts of that day and the first shift the following day will be filled and the extra board employees involved notified where they would be expected to work on that day and/or the first shift of the day following. Any vacancies arising after the 11:45 a.m. to 1:00 p.m. boardmarking were always filled from the first out extra employees and they were expected to be available for call

at any time of the day or night that a vacancy became known, otherwise their guarantees were offset by an amount comparable to what the individual would have earned on the position for which his services were sought.

The Organization requested relief from the requirement that extra employees literally had to be available for call twenty-four hours daily. The Carrier agreed to modify the Agreement to the extent indicated in the January 10, 1980 Letter Agreement, specifically Paragraph 2 in the instant case. The execution of the Letter Agreement thereafter only required the employees to be available for call during a three-hour period prior to the starting time of a vacancy that might arise after the 11:45 a.m. to 1:00 p.m. boardmarking.

There was no misunderstanding between the Parties as to what was required of extra employees when the Agreement was executed on January 10, 1980, as evidenced by the fact that the instant dispute, which arose eighteen months after its execution, is the first and only one of this nature that has been progressed.

The majority in its decision observes that the language in the Letter Agreement is not explicit enough to warrant a determination other than that the claimant should be available between 11:45 a.m. and 1:00 p.m. and only at such other times as the Carrier might possibly be able to contact him three hours prior to the starting time of a vacancy.

Such a conclusion, in light of the Agreement language involved, which the Carrier insists is clearly explicit is not only absurd, if followed it all but destroys the Carrier's ability to secure the services of an extra employee to fill any position arising after 1:00 p.m. and prior to 11:45 a.m. the day following. There would literally be no motivation for an employee to protect any work for which called outside the two hour and fifteen minute period the majority has concluded to be the only requirement placed on extra board employees in order to receive their monthly guarantees.

For the reasons set out above, the majority's decision in the instant case not only is palpably erroneous, but it rewards an employee who might deliberately avoid all service except that for which called during a period of only two hours and fifteen minutes out of the twenty-four hours and cannot serve as valid precedent for future claims of a like nature, therefore, I vigorously dissent.

O. R. Bailey, Jr.

O. R. Bailey, Jr., Carrier Member
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