

Public Law Board 6485

Parties to Dispute

United Transportation Union)	
Yardmasters Department)	
)	
vs)	Case 7/Award 7
)	
Burlington Northern Santa Fe Railroad)	

Statement of Claim

Claim by Fort Worth Yardmaster Vernon Abbott for a day's pay. Mr. Abbott was not rested for his job when an extra Yardmaster filled his assignment.

Introduction

The Claimant to this case, Vernon Abbott, was assigned to a regular Yardmaster relief position with the following days and hours:

Friday & Saturday	Roving Yardmaster	22:00 - 6:00 hours
Sunday & Monday	Roving Yardmaster	14:00 - 22:00 hours
Tuesday	North Yard Hot Seat	14:00 - 22:00 hours

The instant claim surfaced after the Claimant had worked on a Saturday which was May 25, 2002. On that day he was working as a roving Yardmaster at the Carrier's north Yard, in Fort Worth, Texas. He was working the 22:00 - 6:00 shift. He was scheduled to be relieved at 6:00. But the Yardmaster who was supposed to relieve the Claimant on Sunday morning, May 26, 2002, laid off. According to the Carrier there were no GREB or extra Yardmasters available albeit a Yardmaster working the Carrier's Saginaw Yard, which is part of the Fort Worth consolidated terminal, was asked to double through and relieve the Claimant at 6:00 hours. As it turned out it took the Saginaw Yard Yardmaster

about an hour to get to the north Yard to relieve the Claimant and the latter ended up working an hour of overtime. Since the Claimant needed to be off 8 hours prior to returning to work he was told to return to work, therefore, on May 26, 2002 not at 14:00 but at 15:00 and to start working the second shift on May 26, 2002 an hour late. The Claimant refused to return to work at 15:00 for the second shift on grounds that he was required to lay off eight hours between shifts. Since that was not happening advised supervision that he was laying off.

The Claimant subsequently filed a claim for 8 hours' pay for his May 26, 2002 shift that he did not work. The claim was denied by the Carrier and subsequently appealed by the Organization up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property it was docketed before this Board for final adjudication.

Discussion

According to the Organization the Carrier did not properly apply Rule 2 of the labor Agreement when it tried to make the Claimant to come to work an hour late after he had worked a hour of overtime on his preceding shift. The pertinent language of the Rule 2 cited by the Organization in this case is the following:

Rule 2 (E)

Yardmasters shall not be required to commence a tour of duty in less than 8 hours after being relieved from a previous shift.

Since the Claimant had worked a hour of overtime on his 22:00 - 6:00 shift on

May 25, 2002 the Organization argues that the Claimant was not "...by agreement available to commence his tour of duty, 14:00 - 22:00 (on May 26, 2002) at its bulletined starting time. According to the Organization Rule 2 (E) does not say "...commence duty..." but rather states "...commence a 'tour of duty'...". But the Claimant was not available to start his assigned "tour of duty" on December 26, 2002 since there was only 7 hours between when he finished his overtime on the preceding tour and the start of his next assigned tour. The Organization argues that the "...Carrier is not free to manipulate bulletined starting times at will...".

The Carrier states that the only issue in this case is "...whether the applicable collective bargaining agreement provisions allow the BNSF to hold a job for an incumbent pending legal rest...". But, the Board observes, there is a bit more to the Carrier's argument than this somewhat abstract proposition about where it stands on this matter. The Carrier agrees with the Organization that the Claimant owned the relief job which meant that he had the right to work the 22:00 - 6:00 hour shift starting on May 25, 2002 and he also had the right to work the 14:00 - 22:00 hour shift on May 26, 2002. But the Carrier goes a step further: it argues that the Claimant not only owned the right to work these two shifts, but he also owned the right to be paid for them. According to the Carrier: "...BNSF was willing to wait for (the Claimant) to become rested (under the Hours of Service Law) *recognizing that, under the agreement, he was under pay beginning at 2:00 PM...*" or at 14:00 hours (Emphasis added). In short, the Carrier is

saying that it has no choice but to recognize the provisions of the Hours of Service Law¹. In view of this, it asked its supervisors to honor both that federal law, and the labor Agreement, by asking the Claimant to come to work one hour late on his May 26, 2002 shift and work only to the end of the shift, even though it was willing to honor its obligation to pay him for the whole shift.

The Carrier also offers other arguments in this case which the Board has studied. They are, as the Board will conclude in the Findings which follow here immediately, simply superfluous. The solution to the dispute raised in this case is found in the argument by the Carrier raised in the immediate foregoing. Neither this Board, nor any other reasonable mind, need go any further.

Findings

In comparing the arguments of the parties in this case as outlined by the Board in the foregoing the Board can only conclude that they are congruent. The Organization states that the Claimant's bulletined hours must be respected. Whether Rule 2 actually says that or not need not really be addressed here by the Board. Because the Carrier does not disagree with the general proposition that the Claimant's bulletined hours must be respected. At no time did the Carrier state that it asked the Claimant to do otherwise than simply cover his bulletined hours. But the Claimant could only cover them on the date of May 26, 2002 in a particular way because of the provisions of the Hours of Service Law.


¹The interpretation of which is beyond the authority of this Board.

Irrespective of when, or how long, the Claimant was asked to work his May 26, 2002 shift because of the required application of the federal statute, the Carrier states that it was still prepared to pay the Claimant his full eight hours for the shift on this day. Only the Claimant was given the option of not having to work the full eight hours. Yet he was to be paid the full eight hours anyway. To this Board, and to any reasonable person --- who normally would have to actually work for all of the time they are being paid --- that sounds like a pretty good deal. To add frosting to the cake, the Claimant was also put in the position of being able to earn a hour of overtime on his shift on May 25, 2002.

This is one of those rare cases where the problem raised is not real. It is only imagined. Exactly why the Claimant refused to work 7 hours on May 26, 2002 while being offered the opportunity to earn the equivalent of 8 hours' pay is best understood by the Claimant himself. His actions represent one of those mysteries that Boards such as this occasionally come across and which they find to be inscrutable.

Award

The claim is denied.



 Edward L. Suntrup, Chairman & Neutral Member



 G. L. Shire, Carrier Member



 J. R. Cumby, Employee Member

Date: 9/26/03