

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24855
Docket No. 44503
97-1-96-1-M-2057

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company
((former MidSouth Rail Corporation)

STATEMENT OF CLAIM:

"Claim of MidSouth Rail Engineer R. B. Parks, Employee No. 40088 for payment of one (1) basic day account not used on his regular assignment, train No. 33, which is bulletined to operate 7 consecutive calendar days on July 6, 1995-Declination No. 637."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was the regularly assigned engineer on Train No. 33, bulletined to operate from Shreveport to Monroe, LA, and back. The bulletin which established the assignment was issued on May 1, 1995 and stated the following:

"No. 22 Operating in express freight service Shreveport/Deramus Yard and Newmans, working Sunday through Saturday, No Rest Days, away from home terminal, Monroe, LA. Off Duty point Shreveport. Assignment will be called daily."

On Wednesday July 5, 1995, Claimant reported for duty at 5:30 p.m. at the Monroe Freight Yard, and worked his regular assignment, arriving in Shreveport at 5:00 a.m. on July 6, 1995.

According to Claimant's timeslip, he next worked an express freight assignment on July 7, 1995, at 1:00 a.m. in Shreveport. The Claimant arrived in Waverly at approximately 1:00 p.m., and was relieved, and transported to the freight yard at Vicksburg, where he went off duty at 1:35 p.m.. Later that same day, July 7, Claimant, who was rested and available for service, went on duty at 11:35 p.m., arriving back again at Shreveport at 1115 hours.

The Organization submitted the following:

"Claim of MidSouth Rail Engineer R. B. Parks, for payment of one (1) basic day, account not used on his regular assignment, train No, 33, which is bulletined to operate 7 consecutive calendar days on July 6, 1995."

Carrier denied the claim, premised upon:

"During the week including the above claim date, you were working your regularly assigned position on an Express Freight bulletined to work seven days, with no set starting time 'assignment to be called daily.' Due to the fact that during the work week July 3 through July 9 you were paid for eight (8) and one half (1/2) starts during said work week and there is no other provision or agreement in effective (sic) at this time which provides additional compensation in addition to that you have already received, your claim for '1 calendar day at Road Rate account not being used on

calendar day on regular 7 day assignment' is hereby respectively declined."

Rule 15 - WORK WEEK ASSIGNMENTS - provides, in pertinent part:

- "a. All regular local and express freight assignments shall be bulletined and operated for not less than six (6) consecutive calendar days per week, except for locals in turnaround service. Locals in turnaround service assignments shall be operated not less than five (5) consecutive days per week.
- e. In the application of paragraphs a and b above when local, express freight, road switcher or yard assignments are annulled for any reason for one (1) day or more, employees holding positions thereon shall be allowed one (1) basic day's pay at the applicable rate of the position held for each day or days such assignments are annulled."

The assignment in dispute was bulletined as a seven (7) day assignment, "...bulletined and operated for not less than six (6) consecutive calendar days per week...", under the clear and express agreement language contained in Rule 15. While Carrier is correct in its assertion that the above rule constitutes a guarantee for the assignments created, the Rule also guarantees, in unambiguous terms, that an express freight assignment "shall be "...operated for not less than six (6) consecutive calendar days per week"".

Carrier conceded that because of the "setting back" of the starting time of an assigned crew, Claimant was not called to work on July 6, 1995, at all; but rather was called to report for duty in the early morning hours of July 7. However, the clear and unambiguous language set forth in Rule 15 of the Agreement provides that engineers performing the very service which Claimant performed, will be called not less than six (6) consecutive calendar days per week. The Rule provides no exception for contingencies like Carrier pleads in this case. Based on the clear and unambiguous contract language, this claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 22nd day of October 1997.