

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 24883  
Docket No. 44493  
98-1-96-1-T-1259

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: (  
(Tacoma Municipal Belt Line Railway

STATEMENT OF CLAIM:

"Claim of Engineer G. C. May for a basic day plus shortcrew allowance (\$14.25) in addition to all other earnings account Carrier (on November 22, 1994) did not allow G. C. May to exercise his seniority to the job of his preference. Carrier violated Articles 4(a), 5(c), 8, 9(d) of current agreement."

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.

This claim involves the system of daily mark-ups to assignments, a system which is somewhat unique to this property. Regular Engineers must exercise their seniority, to the job of their preference, by 3.00 P.M. each day. Engineers may claim a night shift assignment on the calendar day of the bid, or a day or afternoon (swing) shift for the

following day. At mark-up time the senior Engineer chooses the assignment he/she prefers to work on any particular day of his/her work week, then the next most senior Engineer makes his/her selection, and so on until each of the vacancies for that day are filled.

Additionally, if Carrier calls an EXTRA job after mark-up time, it must recall the entire Board and offer that EXTRA job for seniority preference in the same manner as the Board was originally called. EXTRA Engineers have their own daily mark-up system, similar to the regular Engineers, based on seniority, which permits extra Engineers to select an assignment vacancy by preference in seniority order. On any day that an extra list Engineer cannot work an Engineer's vacancy, he/she must protect service in his/her former craft.

On November 22, 1994, Carrier notified Engineer G. C. May (Claimant) that two day shift vacancies existed for Engineers on the following day – the 7:01 A.M. job and an EXTRA 7:59 A.M. job. Claimant, who was number two in seniority, stated that he preferred to work the 7:59 A.M. EXTRA job. However, Carrier informed Claimant that he must work the 7:01 A.M. job because there was not a rested straight time Engineer available for the earlier assignment. Carrier ultimately filled the EXTRA position with Engineer R. Kilgus, who ranked number three on the seniority roster. The Organization submitted a claim on behalf of Mr. May maintaining that Carrier violated Articles 4(a), 5(c), 8 and 9(d) of the Agreement, when it "restricted Claimant's seniority by refusing to permit him to mark-up to the assignment of his preference."

In its denial, Carrier asserted that although Claimant requested that he be marked up for the EXTRA position, Carrier must "balance that preference by obligation." Carrier further contended: "The fundamental rights of a Carrier to efficiently and economically operate its properties unless otherwise constrained by the agreement between the parties is established by numerous awards of the NRAB and various other forums." On that basis, Carrier concluded that since there were no "available and rested" Engineers to fill the assignment, Claimant's seniority "required him to fill the 7:01 a.m. position in lieu of his preference" (the 7:59 A.M. EXTRA position). Finally, Carrier asserted that there is no rule in the Agreement which required it to utilize an employee at the overtime rate, or would require it to delay service to its customers until a junior Engineer became rested.

Form 1  
Page 4

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**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 10th day of March 1998.