

Form I

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24936

Docket No. 44593

98 1 96-1-T-1261

The First Division consisted of the regular members and in addition Referee John B. LaRocco 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 eight (8) hours at time and one-half rate plus \$17.00 short crew allowance account carrier used extra list Engineer B. S. Taylor on the 7:30 am sw. assignment in violation of article 5 para C, article 2 section 4 para C, article 9 para D.”

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.

On Friday, February 16, 1996, at 3:00 P.M., the Carrier engaged in the daily mark up process for Engineers to fill the following day's assignments. One of these assignments was the 7:30 A.M. Saturday switch engine assignment.

Claimant, an extra Engineer, had worked five shifts during the week and he now made himself available to work on Saturday, February 17, 1996. Although Claimant

was senior to extra Engineer Taylor, the Carrier assigned Engineer Taylor to the 7:30 A.M. Engineer's vacancy.

Engineer Taylor had worked as a Switchman on February 13, but he had refused to work in switching service on February 12, 14, 15 and 16. The pertinent portion of Article 5(A) of the Agreement reads:

"Extra list engineers refusing work as an engineer and/or service in any other craft in which such engineer holds seniority and/or rights to service, shall have that day considered as a service day performed of his/her five (5) day work week (for purpose of order of call - not rate of pay)."

Article 5(E) provides that before calling an Engineer for a sixth shift during any work week, the Carrier may call extra Engineers who have not completed five straight time shifts in the same week. However, where two or more available Engineers are making a sixth shift or higher start for the week, the Carrier must call the most senior Engineer.

The issue in this case is whether, for purposes of filling the 7:30 A.M., Saturday assignment, Claimant and Engineer Taylor should both have been treated as if they had each worked five shifts.

The facts and issue in this case are virtually identical to the facts and issue in First Division Award 24761 which involved the same parties. In that Award, the Board concluded that an Engineer, in the same situation as Engineer Taylor, is treated as having worked five shifts because the days on which the Engineer refuses work, regardless of the craft, are counted as service towards the total number of shifts for the work week per Article 5(A). For the reasons more fully set forth in Award 24761, this Board sustains this claim for a basic day at the straight time rate of pay but we deny the request for a short crew allowance.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 3

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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 14th day of July 1998.