

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24937
Docket No. 44594
98-1-96 1 T-1262

The First Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Tacoma Municipal Belt Line Railway

STATEMENT OF CLAIM:

"Claim of Engineer R. L. Kilgus for eight (8) hours at time and one-half rate plus \$17.00 short crew allowance account carrier used extra list Engineer J. W. Click on the 3:30 pm sw. assignment in violation of article 2 section 4 para C, article 5 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.

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

Claimant, an extra Engineer, had completed five shifts during the work week and he now made himself available for work on Saturday. Click worked as an Engineer on February 14, 15 and 16. Inasmuch as he could not hold an engine assignment on February 12 and 13, he reluctantly refused to perform work as a Switchman. Claimant is senior to Click. Instead of calling Claimant for the 3:30 P.M. assignment, the Carrier used Click.

The pertinent portion of Article 5(A) of the Agreement provides:

"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 the Carrier must call the most senior of two available extra Engineers when both are making their sixth shift start of the workweek. However, the Carrier may call an Engineer who has not yet performed five shifts during the workweek before calling a more senior Engineer making a sixth shift start.

The issue in this case is whether for purposes of the 3:30 P.M. Saturday assignment, Claimant and Engineer Click should have been treated as if they had each performed five shifts of work.

We find that the facts and issue in this case are identical to the facts and issue underlying First Division Award 24761 involving these same parties. In that Award, the Board concluded that an extra Engineer, in the same situation as Click, is treated as having worked five shifts because the days on which the Engineer refuses work, regardless of craft, are counted as service towards the total number of shifts in the workweek 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.

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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.