

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24938

Docket No. 44595

98-1-96-1-T-1263

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 M.P. Hastings for eight hours pay (Basic Day) in addition to all other earnings account carrier did not allow claimant to exercise his seniority to the job of his preference. Carrier in violation of agreement article 8 part B, article 9 part D on 10-28-95.”

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 the daily mark up time (to fill the following day's assignments) for regular Engineers on October 27, 1995, Claimant, who was number four on the seniority roster, expressed his preference to work the 2:30 P.M. assignment on October 28, 1995. However, the Carrier force assigned Claimant to the 7:30 A.M. job. The Carrier submitted that, other than Claimant, there were not any straight-time, rested Engineers available to fill the 7:30 A.M. assignment. If Claimant had been permitted to work the 2:30 P.M. job, Engineer Click, who was junior to Claimant, would not have been able

to hold any job because he would not have completed his mandatory rest in time to work the morning assignment. By forcing Claimant to the 7:30 A.M. assignment, Click was rested and able to work the 2:30 P.M. job.

The Organization charges that the Carrier violated Articles 8(B) and 9(D) of the Agreement. The first sentence of Article 9(D) provides: "The right of preference of work shall be governed by seniority."

This Board finds that the underlying facts and issue of this claim are identical to the facts and issue in First Division Award 24883 involving these same parties. In that decision, the Board held that the Agreement language, which is plain and unambiguous, requires the Carrier to permit regular Engineers to exercise their seniority to claim assignments according to strict seniority order. The fact that this exercise of seniority may necessitate that the Carrier call an Engineer on overtime does not excuse the Carrier from adhering to the language in the Agreement. For the reasons more fully set forth in Award 24883, we sustain this claim for a basic day at the straight time rate of pay. [See, also, First Division Award 24884.]

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 14th day of July 1998.