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NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25448

Docket No. 45718

03-1-02-1-M-2095

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

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

STATEMENT OF CLAIM:

"Claim of MidSouth Engineer S.C. Sit for one (1) Basic Day at Express Freight Rate in excess of all other earnings account taken off eastbound train #7 at Smiths, MS and required to operate westbound train #71 back to Bossier City, LA on March 2, 2001. (Carrier File No. MO101-2668)."

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.

Claimant S. C. Sit was assigned as Engineer to operate train No. 7 east from Bossier City, Louisiana, to Vicksburg, Mississippi. Enroute, the Claimant was instructed by KCS Dispatcher L.D.W. to stop his train at Smiths, Mississippi, and board westbound train No. 72 and operate it back to Bossier City, Louisiana, and tie up. The Claimant submitted claim for one basic day at the freight rate in excess of

all other earnings account instructing him to violate Article VIII, paragraph 8, of the newly ratified (April 30, 2000) Engineer's Agreement. The claim was subsequently declined on March 22, 2001, by letter over the signature of Denise L. Brame, Administrative Manager.

The basic dispute in this instance is whether on March 2, 2001, the Claimant was operating in assigned service or whether he was working in unassigned pool service. There is also a question of when Article VIII – Unassigned Pool Freight Service of the Agreement signed April 30, 2000, went into effect.

Article VIII – Unassigned Pool Freight Service.

“8. Engineers in this service will operate in straight away service only.

- (a) An engineer at the home terminal or away-from-home terminal can be used in turn-around service only if the engineers extra board is exhausted. If so used, this service will be considered dogcatcher service only and crew will be tied up at the home terminal upon completion of this service.
- (b) An engineer at the away-from-home terminal can be required to make a maximum of one turn-around trip except in case of wreck, washout, or act of God, and then will be deadheaded or worked back to his home terminal as a separate trip.”

The Organization contends that Article VIII became effective on April 30, 2000 when the most recent Schedule Agreement was signed on April 30, 2000. It also contends that the Claimant was working as an Engineer in pool freight service on the date of the instant claim and therefore the Carrier was required to use him in straight-away service only. It finally argues that regardless of what class of Engineer he was working as on the claim date, he was taken off an eastbound train before his run was completed and assigned to operate a westbound train back to his home terminal. This assignment belonged to an Extra Board Engineer and should not have been assigned to the Claimant.

The Carrier contends that the Claimant was not improperly directed to leave his train at Smith, Mississippi, and operate train No. 72 back to Bossier City. It

argues that Article VIII of the April 30, 2000, Agreement was not implemented until June 18, 2001, so the Claimant did not come under the terms of that Article on the claim date. The Carrier contends the Organization is making an unsupportable claim in this instance and the Board should deny the claim on that basis.

The Board has studied the record and reviewed the parties' arguments side by side. That review persuades the Board that the record weighs heavily in favor of a conclusion that the terms of Article VIII, paragraph 8, should apply to Engineers after April 30, 2000. It appears from the record that the Claimant's status as an Engineer prior to April 30, 2000, was as an Engineer in pool service, just as it was after April 30, 2000, up until at least the time of the Board meeting in this matter.

The record also indicates that after April 30, 2000, and prior to June 18, 2001 (the date the Carrier contends Article VIII, became operative), the Carrier considered Article VIII in effect. Karen Williford, the Carrier's Field Director of Labor Relations, denied Engineer claims in August and September 2000, based on the terms of Article VIII, paragraph 8(b), of the April 30, 2000, Agreement. High level discussions took place between the Carrier's Labor Relations personnel and the General Chairman concerning the meaning of terms and conditions prior to June 18, 2001. There is nothing in this record to support the Carrier's position that the Claimant was operating as an assigned Engineer prior to June 18, 2001, when, according to the Carrier, the situation changed.

Based on the total record and the effective date of the parties' most recent Agreement of April 30, 2000, the Board has concluded that the Claimant was mishandled in this instance. We find that the claim shall be sustained for a basic day, excluding the \$5.00 certification 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 20th day of August 2003.