

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25980
Docket No. 45934
04-1-02-1-M-2113

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

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“Claim of MidSouth Engineer S. E. Lott for one (1) days pay (Yard Rate) plus 4 hours at overtime rate in addition to all other earnings account not being called for MRC Assignment #34 on November 17, 2001. Engineer S. E. Lott was rested and available when KCS Engineer Hampton was called and used on MRC Assignment #34.”

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 November 17, 2001, Claimant S. E. Lott came off duty as a Conductor at 3:57 A.M. Due to a shortage of Engineers, he was placed on the MidSouth Engineer Extra Board at 1:51 P.M. Three minutes prior to this point, the Caller had notified a Kansas City Southern Engineer to fill Job #34. Engineer Lott filed the instant claim alleging that he was rested and available and should have been called for the

job prior to any KCS/L&A Engineer. The claim alleged a runaround and asked for a payment of one basic day plus four hours overtime pay.

The Board reviewed the record before it and is cognizant of the fact that the BLE Local Chairman and the Chief Caller were working together in the Callers Office to resolve the problem of a serious shortage of Engineers. It appears that the Crew Caller on duty would not accept the advice given him concerning the Claimant's status on the Extra List and how he should be handled in order to avoid a runaround claim. In spite of that fact, however, this claim should be sustained.

Section II (a)(1) of the Implementing Agreement spells out the terms for filling permanent and temporary vacancies on KSC assignments and MRC assignments in the coordinated terminal of Shreveport-Bossier City. The terms pertinent to this dispute read as follows:

"Section II

- (a) Except as otherwise provided herein, KCS employees will fill all permanent and temporary vacancies on KCS assignments and MRC employees will continue to protect all permanent and temporary vacancies on MRC assignments.**

- (1) In the event KCS is unable to fill a temporary vacancy on its yard assignment(s) in the coordinated facility, such vacancy may be filled with an MRC employee and, likewise, should MRC be unable to fill a temporary vacancy on its assignment(s) with an employee headquartered in the coordinated terminal, such vacancy may be filled with a KCS employee. Extra Board employees called to fill temporary vacancies under the provisions of this subsection (a)(1) may not decline such positions. It is understood that KCS and MRC may not use the provisions of this subsection (a)(1) to avoid filling the vacancy with an employee of the railroad who is entitled under the collective bargaining agreement to work the temporary vacancy at the overtime rate."**

The Board has issued Award 25413 involving the same parties and the same Referee as in this case. Award 25413 addressed the identical issue and contract

language present in this case. The Board sustained the claim in that instance. The Board sees no basis on which to rule differently in this instance. The claim is sustained for one basic day at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

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 2004.

