

PUBLIC LAW BOARD NO. 6468

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS))	
AND TRAINMEN)	
)	NMB CASE NO. 185
VS)	AWARD NO. 185
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

It is requested that Engineer H. G. Stacy, ID #188487, record be cleared of this discipline of 2 days overhead for six months and paid for all time lost when required to attend the Hearing on December 15, 2005.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

Claimant was summoned to a formal investigation on a charge that he did not meet the minimum weekend availability requirements during the period October 3, 2005, through November 13, 2005. Following the investigation Carrier found Claimant guilty of the charge and assessed a 2 day overhead suspension for six months as discipline.

This Board has now heard several disputes involving alleged failure to meet Carrier's imposed "Weekend Availability Requirements" and does not disagree with Carrier's overall position that employees are needed to work 24 hours per day and 7 days per week. It is the nature of the industry and certainly the employees who accept work in this industry are aware of those conditions. When the employees do not make themselves available to work, they are stepping outside the bounds of their employment responsibilities. This does not, however, mandate that all operating employees must be "available" to work at all times. Certainly an employee who has worked eight (8) or more hours in a 24 hour period, or more than the standard forty (40) hours in a workweek, is entitled to a reasonable amount of days or time off to rest and recuperate.

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It appears to this Board that the Company Policy here involved merely requires its "Crew Availability Specialists" to look at the calendar dates when making a decision as to whether or not a given employee has, or has not complied with the Policy. The Board must take the position that more than looking at the calendar is required before a given employee can be charged and found guilty of failure to comply; that is, just how many days and hours has the employee actually worked during the workweeks involved in the test period. Certainly if an individual has worked excessive hours in the work week, he is entitled to time off, whether it be on so-called weekends or in the days preceding or following the weekends. In addition, and the Board considers this most important, would the employee have been called and utilized on the weekend days when he made himself unavailable--certainly if the employee would not have been called to work on such day or days, then such day or days should not be used against him; that is, if a given employee would not have been called and worked, he should not be penalized for not having been "available."

Having stated that set out above, the Board should likewise comment on the employees habit of calling in "sick" to mark off on days when they prefer not to work. This is not a good practice and certainly the parties in their wisdom should be able to reach some accommodation in allowing the employees ample opportunity to remain away for one or more days without having to call in "sick."

In the dispute before us, the record is quite clear that in the period involved in this particular dispute; that is, from October 3, 2005 through November 13, 2005, Claimant actually worked an average of 50 to 60 hours per week (see claimant's testimony at transcript page 26) or as he also testified (transcript page 80) he actually worked 82 to 84% of the time. Based on such record, which Carrier has not disputed, the question before this Board is whether or not Claimant should have been penalized for not being "available" for additional service.

Based on the record in its entirety, which indicates Claimant performed considerable service during the period involved, the Board cannot uphold Carrier's decision to discipline him in this instance. This claim must be sustained.

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AWARD

Claim sustained. Carrier is instructed to comply with this Award within thirty (30) days of the date hereof.

F. T. Lynch
F. T. Lynch, Neutral Chairman

H. J. Garcia
H. J. Garcia, Carrier Member

Paul T. Sorrow
Paul T. Sorrow, Employee Member

Award date 06/29/07

