

Award No. 15613
Docket No. TD-16269

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Pennsylvania Railroad Company (hereinafter referred to as "the Carrier") violated and continues to violate the effective agreement between the parties, Regulations 3-D-1 and 3-E-1 (Part II) and Regulations 2-B-1 (Parts I and II) thereof in particular, when beginning November 12, 1964, the Carrier required Train Dispatcher J. J. Kane who held a regular position under Part I of agreement, to assume the Relief Movement Director position awarded by Bulletin No. 40, dated November 12, 1964 as follows: "No applications received from qualified Movement Directors for position shown on Bulletin No. 30 dated November 3, 1964 awarded to J. J. Kane under Regulation No. 2, Rule 2-B-1 (d).

(b) The Carrier shall be required to compensate J. J. Kane for the continued violation of the agreement from November 12, 1964 until such time as Train Dispatcher Kane is restored to his regular Train Dispatcher position, in the following manner:

On Thursday, November 12, 1964 and each succeeding Thursday thereafter for one (1) hour (11 P.M. to 12 Mid-night) at one and one-half times rate of Movement Director position in accordance with Regulation 4-D-1 (Part I).

On Friday, November 13, 1964 and each succeeding Friday thereafter for one (1) hour (11 P.M. to 12 Midnight) at one and one-half times rate of Movement Director position in accordance with Regulation 4-D-1 (Part I).

On Saturday assignment (actually 12 Midnight to 8:00 A.M., Sunday, November 15, 1964) and each succeeding Saturday assignment (service being performed on each succeeding Sunday, 12 Midnight to 8:00 A.M.) at one and one-half times rate of the Movement Director position in accordance with Regulation 4-C-1 and 4-D-1 (Part I).

On Monday, November 16, 1964 and each succeeding Monday thereafter for eight (8) hours (3:00 P.M. to 11:00 P.M.), at pro rata rate of claimant's regular Train Dispatcher position in accordance with Regulation 4-D-1 (Part I).

On Tuesday, November 17, 1964 and each succeeding Tuesday thereafter for Seven (7) hours (8:00 A.M. to 3:00 P.M.) at one and one-half times rate of Movement Director's position in accordance with Regulations 4-D-1 (Part I).

On Wednesday, November 18, 1964 and each succeeding Wednesday thereafter for Seven (7) hours (8:00 A.M. to 3:00 P.M.) at one and one-half times rate of Movement Director's position in accordance with Regulation 4-D-1 (Part I).

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties, dated June 1, 1960, copy of which is on file with this Board and the same, by this reference, is incorporated as though fully set out herein.

For ready reference, certain regulations pertinent to this dispute are here quoted. (Pennsylvania Railroad Agreement, June 1, 1966, Part II.)

"2-B-1. (d) When no applications are received from Movement Directors for new positions or vacancies which have been advertised, the senior qualified extra Movement Director will be assigned."

"2-B-1. (g) Extra work as that term is used in Part II of this Agreement shall consist of the following and shall be performed by extra men as provided in Regulation 5-B-1:

1. Relief requirements of less than five (5) days' work per week.
2. Temporary positions or vacancies of less than five (5) days' duration.
3. Temporary positions or vacancies of five (5) or more days and less than thirty (30) days' duration where no written request has been received under Regulation 2-B-1 (e) or pending assignment when such request has been received.
4. Permanent position or vacancies, or temporary positions or vacancies of more than thirty (30) days' duration, pending advertisement, award and assignment when no written request has been received under Regulation 2-B-1 (e)."

"2-B-1. (i) In the application of paragraphs (e) and (g) of this Regulation (2-B-1) and in the application of Regulation 5-B-1, employees who hold seniority under Part I as well as Part II of this Agreement will not be considered eligible to apply for temporary positions and vacancies or to perform extra work as Movement Director while holding a regular position as Train Dispatcher or while occupying a temporary Train Dispatcher position or vacancy acquired under the provisions of paragraph (a) of Regulation (2-B-1) of Part

the Movement Director position advertised in Bulletin No. 39 and (2) whether the Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here before us is not related to the performance of extra service, or the filling of temporary vacancies.

We are concerned with regularly assigned Train Dispatchers, holding seniority as Movement Directors, and their obligation, when no applications are received for advertised new positions or vacancies in the Movement Director Class, to take such permanent position.

The answer is clearly given in Regulation 2-B-1 (d) of the applicable agreement:

"When no applications are received from Movement Directors for new positions or vacancies which have been advertised, the senior qualified extra Movement Director 'will be assigned.'"
(Emphasis ours.)

It is, thus incumbent on the Carrier to assign the senior qualified extra Movement Director, and equally incumbent upon such Movement Director to accept such assignment.

Claimant here was the senior qualified extra Movement Director.

We, therefore, find no violation of the applicable agreement in Carrier's action.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1967.

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