



AWARD NUMBER 17422
DOCKET NUMBER TD-17317

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
NORFOLK AND WESTERN RAILWAY COMPANY
(LAKE REGION)

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

- (a) The Norfolk & Western Railway Company (NYC&StL), (hereinafter referred to as "the Carrier"), violated the effective schedule agreement between the parties, Article 5(d) thereof in particular when it required regularly assigned train dispatcher to fill the position of first trick assistant chief train dispatcher, Frankfort, Indiana, on Wednesday, November 30, 1966.
- (b) The Carrier be required to compensate the senior available extra train dispatcher, R. L. Rafferty, one day's compensation at rate of assistant chief train dispatcher because of the violation referred to in paragraph (a) hereof.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, a copy of which is on file with this Board. Said Agreement is incorporated into this submission as though fully set out herein. That Agreement, effective August 1, 1951, was entered into by and between the former New York, Chicago and St. Louis Railroad Company (commonly known and referred to as the "Nickel Plate") and the claimant organization. Said Agreement has been revised from time to time since its effective date but not in respect to the rules involved in the instant dispute.

Effective October 16, 1964, the former New York, Chicago and St. Louis Railroad ("Nickel Plate") was merged into the facilities of the Norfolk & Western Railway Company, pursuant to authorization granted by the Interstate Commerce Commission in that agency's Finance Dockets 21510 et al. In connection therewith, on April 16, 1962, certain organizations, including the Organization here before the Board, entered into an agreement with Norfolk & Western with respect to the then pending merger proceedings. Section 1(c) of that Agreement provides as follows:

"(c) Norfolk & Western will take over and assume all contracts, schedules and agreements between Nickel Plate and the labor organizations signatory hereto concerning rates of pay, rules, working conditions and fringe benefits in effect at the time of consummation of the said merger, and will be bound by the terms and provisions thereof, subject to changes in accordance with the provisions of the Railway Labor Act, as amended, in the same

patcher's position at Frankfort, Indiana. In the opinion of the regular first-trick assistant chief train dispatcher, he was then considered qualified to perform the work of the position in question.

The subsequent handling of the claim on the Carrier's property is shown by the following letters, which are reproduced as Carrier's exhibits:

Exhibit "A"—December 11, 1966—Appeal—General Chairman to Superintendent.

Exhibit "B"—December 20, 1966—Denial of appeal—Superintendent to General Chairman.

Exhibit "C"—December 29, 1966—Appeal—General Chairman to Director Personnel.

Exhibit "D"—January 5, 1967—Acknowledgment of appeal—Director Personnel to General Chairman.

Exhibit "E"—January 23, 1967—Denial of appeal—Director of Personnel to General Chairman.

Exhibit "F"—January 31, 1967—Letter—General Chairman to Director Personnel.

Exhibit "G"—April 25, 1967—Request for conference—General Chairman to Manager Labor Relations (formerly Director Personnel).

Exhibit "H"—May 4, 1967—Arranging conference—Manager Labor Relations to General Chairman.

Exhibit "I"—May 9, 1967—Acknowledging conference date—General Chairman to Director of Personnel.

Exhibit "J"—June 5, 1967—Conference confirmed—General Chairman to Manager Labor Relations.

Exhibit "K"—June 19, 1967—Affirmation of denial—Manager Labor Relations to General Chairman.

Exhibit "L"—July 9, 1967—Rejection of denial—General Chairman to Manager Labor Relations.

Exhibit "M"—July 19, 1967—Re-affirmation of denial—Manager Labor Relations to General Chairman.

(Exhibits not reproduced)

OPINION OF BOARD: Because of the illness of the incumbent, a one-day vacancy occurred on the position of first trick assistant chief dispatcher at Frankfort, Indiana. Carrier called another dispatcher instead of Claimant, who was the senior extra dispatcher, for the alleged reason that Claimant was not qualified to work the vacant position.

Thus, Claimant challenges Carrier's determination that he was not qualified to fill the vacant position.

It is elementary that the determination of whether a person is qualified to fill a particular position rests with the Carrier. Unless the person aggrieved by such a decision of the Carrier can prove by a preponderance of the evidence that Carrier was unreasonable, arbitrary, capricious or discriminatory in making its determination, the latter's decision must stand.

The evidence in the instant case shows that Carrier had uniformly required persons filling assistant chief dispatcher positions to have previously posted on such position at least one day. The evidence further shows that Claimant had not, prior to the date of the claim, posted on the position.

Consequently, we cannot find from the evidence that Carrier was unreasonable, arbitrary, capricious or discriminatory in concluding that Claimant was not qualified for the subject position. Therefore, Carrier's determination in this regard must be permitted to stand and the claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.

LABOR MEMBERS DISSENT TO AWARD 17422, DOCKET TD-17317

Immaturity, and the three 'R's' (reading specific)

Award 17422 held:

"The evidence in the instant case shows that Carrier had uniformly required persons filling assistant chief dispatcher positions to have previously posted on such positions at least one day." (E.S.)

Immaturity—The majority's reasoning is based upon complete lack of knowledge of the train dispatcher class of employees in the railroad industry.

Three 'R's'—The quotation above proves, when checked with the Docket, that the majority did not read the Docket or are oblivious of the facts.

This Award is of no material value to either party and is a true violation of the law this Board is intended to serve.

For these and other reasons this dissent is registered.

/s/ G. P. KASAMIS

G. P. Kasamis
Labor Member

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