

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20044
Docket Number CL-19887

Joseph A. Sickles, Referee

(Brotherhood of Railway Airline, and Steamship Clerks
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (CL-7171)
that:

(1) The Carrier violated the Agreement when it solicited and assigned employee J. L. Wilks to train and work as a Crew Dispatcher with total disregard of the rights of eligible senior **employees** holding **seniority** in the class to such work.

(2) That Carrier be required to compensate Claimant Bob D. Lynch for the difference between the rate of Crew Dispatcher and the position worked as Mill St. Yard Clerk for each day Monday through Friday, beginning June 14, 1971, **that** Wilks was used as Crew Dispatcher, until the violation is corrected.

(3) Carrier shall be required to pay seven percent (7%) interest compounded annually on such difference in rate until such time as Claimant is made whole.

OPINION OF BOARD: On June 14, 1971, Carrier assigned Wilkes to train as a Crew Dispatcher, although he held no seniority under the applicable Agreement.

The Organization, claiming that the position should have been bulletined to employees under the Agreement, requests the difference in pay (on behalf of Claimant) between the yard clerk rate and the crew dispatcher rate.

The same basic issues, involving these parties and the **same Agree-**ment, were recently considered by this Board and Award 19953 (Dorsey) would appear to dispose of Claims 1 and 2. In that case the Board considered a similar training assignment, related to the same employee retirement which gave rise to the instant dispute.

After noting that the employee was in "training", the Board held that "Carrier **did** de facto create a new 'training' position" and,

"inasmuch as the occupant of a position of Crew Dispatcher performed work subject to the Rules of the Schedule Agreement, it follows that the occupant of a newly created position as a 'trainee'

with the objective of qualifying him as a Crew Dispatcher likewise occupies a position and performs work subject to the Rules."

While there may be minor factual differences between the Docket in Award 19953 and this Docket, we are unable to state that the conclusions cited above do not control this dispute.

Regardless of whether a Referee might or might not have reached the **same** conclusion if he considered the matter in the first instance, the best interests of labor relations are served by adhering to a basic doctrine of predictability and compatibility of Awards. This is **particularly** true when the **same** parties and same Rules are involved unless, of course, compelling reasons for a departure are demonstrated.

The Carrier has not provided this Board with Awards which suggest that Award 19953 is palpably erroneous concerning Claims 1 and 2. In fact, precedent Awards submitted in this dispute do, in some degree, support Award 19953. See Awards 17615 (Dugan), 17364 (**Yagoda**), 18022 (Quinn), 18023 (Quinn), and 17180 (Dugan). For the above stated reasons, we sustain Claim No. 1.

Concerning Claim No. 2, we note that a Crew Dispatcher position was bulletined on February 18, 1972 and Claimant failed to bid on same. Accordingly, Claim No. 2 is sustained from June 14, 1971 through and including February 17, 1972.

Notwithstanding our determination to follow Award 19953 on the basic merits of the claim, we view that Award's resolution of the "interest" question in a different context. That question has been the subject of considerable discussion by this Board. Although the great preponderance of Awards have denied interest, for various reasons, Award 19953 concluded by stating:

"Awards of this Board are in conflict as to whether the Board has jurisdiction to award interest as prayed for in paragraph (3) of the Claim. We look to decisions of the Supreme Court for guidance. The Court held, many years ago, that the National Labor Relations Board did not have statutory power to impose a penalty. Subsequently, that Board ordered an employer to pay interest on back pay which it found due to an aggrieved **employee**. Issue was raised as to the Board's power to issue such an order. When the issue was considered by the Supreme Court it held that the order to pay the interest was not a penalty; instead, it was a fulfillment of the "make whole" doctrine. We, therefore, will sustain paragraph (3) of the Claim."

Two prior Awards, concerning the same parties, have denied interest. See Award 18464 (O'Brien) and 18633 (Devine).

Claimant, without stating any rationale for such relief, requested interest in his initial claim. Carrier denied the request, citing Awards of this Division. The Organization never renewed its request while the matter was being handled on the property.

We are not prepared to state that interest may not be awarded in an appropriate case under different circumstances. But, under this record, we are inclined to follow the greater weight of authority and deny Claim No. 3, contrary to the result in Award 19953.

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, 1937;

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

That the Agreement was violated.

A W A R D

Claim (1) is sustained.

Claim (2) is sustained to the extent set forth in the Opinion of the Board:

Claim (3) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division


ATTEST:

A. W. Paulson
Executive Secretary


Dated at Chicago, Illinois, this 20th day of November 1973.

CARRIER MEMBER'S DISSENT & CONCURRING OPINION IN AWARD 20044 - REFEREE SICKLES

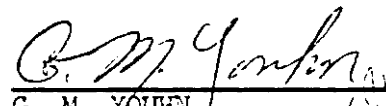
What we stated in our dissent to Award 19953 (Dorsey) relative to the merits of that dispute is by reference incorporated herein. In Award 19953 the employees did not prove their case and they did not do so in the dispute in Award 20044. However the referee did correctly follow "the greater weight of authority" on the interest question and denied the employees request for interest.


W. B. JONES


G. L. NAYLOR


P. C. CARTER


H. F. M. BRAIDWOOD


G. M. YOUNG