

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22206

Docket Number ID-22276

Don Hamilton, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association
{ **Norfolk and Western Railway Company**

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

CLAIM #1

(a) **The Norfolk and Western Railway Company (VIRGINIAN)** (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, including Articles 3(a), 4(h) and 5(c) thereof, when it failed to **call Claimant** senior available **extra train dispatcher K. D. Mills** for service on the first trick **train** dispatchers position in the Princeton, West Virginia office on **December 25, 1974**.

(b) Because of said violation, the Carrier **shall** now **compensate Claimant K. D. Mills** one day's **compensation** at the pro-rata rate applicable to trick train dispatchers for **December 25, 1974**.

CLAIM #2

(a) The Norfolk and Western Railway **Company (VIRGINIAN)** (hereinafter referred to as "the **Carrier**"), violated the effective Agreement between the parties, including Articles 3(a), 5(c) and (7(a) thereof, when it did not permit **Claimant** regularly assigned train dispatcher J. M. Sparks to perform service on the second trick train dispatchers position **in** the Princeton, West Virginia office on **December 25, 1974**.

(b) Because of said violation, the Carrier shall now compensate **Claimant J. M. Sparks** one day's compensation at the pro-rata rate applicable to trick train dispatchers for **December 25, 1974**.

CLAIM #3

(a) **The Norfolk and Western Railway Company (VIRGINIAN)** (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, including Articles 3(a), 4(h) and 5(c) thereof, when it failed to **call Claimant senior available extra** train dispatcher **K.B. Coleman** for service on the third trick train dispatchers **position** in the Princeton, West Virginia office on **December 26, 1974**.

(b) Because of said violation, the Carrier shall now **compensate Claimant K. B. Coleman one day's compensation** at the pro-rata rate applicable to third trick train dispatchers for **December 26, 1974**.

OPINION OF BOARD: **Claim No. 1** is presented on behalf of **K. D. Mills**. The **incumbent** of the First Trick Train Dispatcher position was absent due to illness. Mills had been filling the vacancy and was notified that he **would** not be used on **December 25, 1974**, as the position would not **be filled**. He **claims** pro rata **compensation** for one day at the rate applicable to Trick Train Dispatchers.

Claim No. 2 is presented on behalf of J. M. Sparks. He was the incumbent of the Second Trick Train Dispatcher position and **was** notified that his position would not be filled **December 25, 1974**.

Claim No. 3 is presented on **behalf** of **K. B. Coleman**. The **incumbent** of the Third Trick Train Dispatcher position was absent on vacation **December 26, 1974**. The Carrier did not fill his vacancy on that date. **Coleman** was the senior qualified **Extra Train** Dispatcher standing for call to fill the vacancy.

The Carrier first alleges that these claims are not properly before the **Board**. It is asserted that the **claims** were not "handled in the usual manner" on the property. It is alleged **that** the Petitioner contacted the Carrier on June 18, **1976**, advising the Carrier of the decisions in Awards No. 1, 2 and 3 of Public Law **Board No. 1594**. It is asserted that after reviewing these awards, the Carrier offered to settle these **claims** by allowing Claim No. 2 and denying **Claims** No. 1 and **3**.

The Carrier asserts that the Petitioner did not respond to this proposition but instead, after several months, presented the dispute to the **Board**. There is no question concerning the timely filing of **claims with the Board**. It is **simply a matter of** good faith exhaustion of the possibility of agreement on the property.

The basic issue involved **in** this dispute is the right of the Carrier to blank a Train Dispatcher position on **a** given day. The Petitioner asserts that **there** is no rule in the **Agreement** which permits such action. **The** Carrier argues that there is no rule in the **Agreement** which prohibits such action. Therefore, the **compromise** suggested by the Carrier would not have resolved the basic question which gave rise to the disputes and, therefore, the argument that the Petitioner failed to negotiate in good faith is not well founded.

The Carrier differentiates **Claimants 1 and 3 from Claimant 2** on the basis that the former are not **regularly** assigned **Train Dispatchers** but are extra **men** on **call** when needed. The Carrier urges that these **Claimants** are not **monthly** rated **employees** but are paid a portion of the monthly rate of the Train Dispatcher for each day they actually work as a Train Dispatcher.

The Carrier cites Award 10705 **and** urges the adoption of the theory expressed **therein**, that if the Organization wants a **monthly** guarantee **for** extra **Train Dispatchers** they should negotiate **amendments** to the rules Agreement and not expect this **Board** to accomplish that for **them**.

The Organization relies **upon** Awards No. 1, 2 and 3 **of Public Law Board No. 1594**.

Award **No. 1**, Neutral Member **Lieberman**, while sustaining the **claim**, concluded his Award with the language, "Contrary to the practices and written provisions in other non-operating agreements, Carrier does not have the right to unilaterally **blank** positions on holidays for train dispatchers: this is the only conclusion we **can** reach."

In Award No. 1 of public Law Board No. **1594**, the Claimant was the Senior Available Extra Train Dispatcher who **alleged** he should have been **called** for service on the First **Trick** Eastern Dispatching District in the Florence, South Carolina office December 25, 1974.

In Award No. 2, the **Claimant** was the regularly assigned Belief **Train** Dispatcher on the Third **Trick** position on the East End **December 25, 1974**.

In Award No. 3, the **Claimant** was the regularly assigned Train Dispatcher on the **Third Trick West End December 25, 1974**.

The Carrier dissented to these Awards, advancing the **arguments** (1) that the Awards are based upon **an** alleged practice despite the admitted absence of a **governing** rule; (2) **that** the awards improperly transmute a **monthly** rate into a **monthly** guarantee, **and** (3) the awards fail to recognize the distinction between combining of positions for relief purposes **and blanking** of positions.

Although it is possible that **having heard** the sane or similar arguments this **Board would**, at a **prior** time, have reached a different conclusion than that **reached by** the members of Public Law **Board No. 1594**,

there is a great deal of merit in following the established precedent in these cases. The claims now before the Board and the claims presented to Public Law Board No. 1594 are almost identical. The main principles upon which the Awards rest are without distinction. The Public Law Board determined that the Carrier does not have the right to unilaterally blank positions on holidays for Train Dispatchers. The Carrier is now asking this Board to determine that the **interpretation** does not apply to Extra Train Dispatchers, but, in fact, the interpretation came about in cases which involved Extra Train Dispatchers. Therefore, we find no compelling reason to overrule Public Law Board No. 1594, nor do we find sufficient evidence of record to distinguish the cases before this Board and the cases which were decided by Public Law Board No. 1594, even though Claim 3 in the instant case involves a vacation day, and not a holiday.

It must be disquieting, both to labor and management, when neutrals **vascillate** on basic issues. Therefore, in the interest of perpetuating the legal precedents propounded by Public Law Board No. 1594, the claims herein will be sustained.

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 violated.

A W A R D

Claims 1, 2 **and** 3 are **sustained**.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1978.