

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number **23191**  
Docket Number **TD-22874**

Joseph A. Sickles, **Referee**

**PARTIES TO DISPUTE:** (American Train Dispatchers Association  
(The Atchison, **Topeka** and Santa Fe Railway **Company**)

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

(a) The Atchison, Topeka **and** Santa Fe Railway Company (**hereinafter** referred to as "**the Carrier**"), violated the currently effective Agreement between the parties to this dispute when, on December 10 and December 11, 1977, it failed to provide relief for vacancy existing on Position No. 6511, Assistant Chief Dispatcher, **Clovis**, pursuant to the provisions of Article II, Section **10-b**, as amended.

(b) **The Carrier** shall be required to compensate regularly assigned train dispatcher J. E. Young eight (8) hours pay at the **time** and one-half rate for December 10, 1977, and regularly assigned train dispatcher D. H. Williams eight (8) hours pay at the time and one-half rate for December 11, 1977. Both **claimants** are qualified according to Article II, Section 10-b-1 (5) as amended effective February 1, 1974.

**OPINION OF BOARD:** Assistant Chief Dispatcher Position **6511 was** regularly assigned to work 10:00 a.m. to 6:00 p.m. with Mondays **and** Tuesdays as assigned rest days.

The regularly assigned incumbent (Cooper) observed vacation days **and**, according to the Organization, there were temporary vacancies on the position.

The Carrier did not designate anyone to fill **Position** 6511 on the **dates** in question.

Article II, **Section** 10-B-1 **provides** that temporary vacancies of less than 10 work days duration will **be** filled in accordance with certain contractually **specified** precedences.

In response to the initial claim, the Carrier **stated** that it **found** no basis **under** the **Rules** Agreement. When the **matter** was appealed, **the** Carrier advised that **management** has always had the right to "blank" positions if it so desires when the occupant of the position is "**off for some reason.**" **Further**, the Carrier stated that in the instant **claim**, "... The work of Position No. 6511

"**was** not performed by anyone else, nor was any territory changed or added to other **positions**, i.e., the work of Position No. 6511 **was** not performed on claim dates."

In that **correspondence**, it cited a number of awards **establishing** a Carrier's right to blank positions.

**In** direct reply to that correspondence, the Organization pointed out:

'Your statement that the work of Position **6511 was** not **performed** by **anyone** else, nor was any territory changed or added to other positions, i.e., the work of Position No. 6511 was not performed on claim dates is in error. The work was added to and assumed by the Chief Dispatcher until he was relieved by the Assistant Chief Dispatcher, who was then required to perform the work, in addition to all other assigned duties, **until** the end of the assigned hours of Position No. 6511 on the days **claimed**."

Although the Carrier corresponded **with** the Organization **concerning** this **claim on** two further occasions, the Carrier never disputed the factual assertion cited above.

To be sure, the Carrier has raised a number of factual **assertions in** its Submission to this Board and has, **in** that document, asserted that no one performed any work of the Assistant Chief Dispatcher, as the position was "blanked in its entirety." **However**, as has been frequently held by this Board, a party may not raise, for the first time, factual allegations in its **Submission**. Stated differently, in order to urge various factual matters to **the Board**, **they must** be raised and considered while the matter is under review on the **property**. The Carrier's failure to dispute the **Employees'** above-cited factual assertion while the **matter** was under review on the property precludes their attempt to do so **in** the submission. Thus, we agree with the assertion of the **Employees** that **this** case does not properly present to us a question of the right to blank the positions.

At Page 10 of its Submission, **the** Carrier recognizes that pertinent agreement sections are significant if the Carrier elects to fill the position and, accordingly, we will sustain the claim.

Similarly, any question of the propriety of awarding damages is misplaced because **that matter** was not raised by the Carrier while the matter was under review on the property.

**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

**Claim sustained.**

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: \_\_\_\_\_

  
Executive Secretary

Dated at Chicago, Illinois, this **18th** day of **February 1981**.