

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24425**
Docket Number **TD-23758**

Martin F. **Scheinman**, Referee

(American Train Dispatchers Association

PARTIES TO DISPUTE:

└Boston and Maine Corporation, Debtor

STATEMENT OF CLAIM: (a) A violation of the current effective agreement between the **Boston** and Maine Corporation (hereinafter referred to as the "Carrier") and the American Train Dispatchers Association (hereinafter referred to as the "Organization"), namely Article **4(d)**, when on Monday, October 1, 1979, the Carrier through it's representative, **ASofO** S. J. Gallant, directed Extra Train Dispatcher Victor W. **Salemni** to cover the **1500** to 2300 Hours position, Boston office-Fitchburg and New Hampshire Districts and paid said Extra Train **Dispatcher** Victor W. **Salemni** at a rate less than the existing trick train dispatcher's rate.

(b) A further violation of the current effective agreement between the Carrier and the Organization, namely, Article **5(b)** as amended by Decision TD-10 dated March 19, 1958 occurred when the Carrier refused to recognize the date of October 1, **1979** as the established seniority date for Extra Train Dispatcher Victor W. **Salemni**.

The Carrier shall now:

(c) compensate Extra Train Dispatcher Victor W. **Salemni** the difference between the rate paid for October 1, **1979** and the existing trick train dispatcher's rate; and,

(d) place the name Victor W. **Salemni** on the Train Dispatcher's roster with a seniority date of October 1, 1979.

OPINION OF BOARD: On the date this claim arose, **Claimant**, V. W. **Salemni** was regularly employed as a **Towerman**.

On October **1, 1979**, Claimant was posting as a trainee in the Train Dispatcher's office at North Billerica, Massachusetts. At approximately 1830 hours Train Dispatcher Coughlin, who was working the second trick on the East End Train Dispatcher's assignment, **became** ill and had to be taken home. Train Dispatcher S. D. Hansbury, who was working the New Hampshire-Fitchburg Routes Train Dispatcher assignment was sent to replace Coughlin. As a result, Claimant was ordered by Assistant Superintendent of Operations Gallant, to replace Hansbury. Claimant functioned on the New **Hampshire-Fitchburg** Routes **assignment** from about 1830 hours until 2330 hours, the end of the trick.

The Organization maintains that Claimant's work on the New Hampshire-Fitchburg Routes constituted "service" as a train dispatcher. Thus, according to the Organization, Carrier violated Articles **4(d)** and **5(b)** of the Agreement by failing to compensate Claimant for five hours pay at the train dispatcher rate and also by failing to recognize Claimant's establishment of a seniority date of October 1, **1979** as a train dispatcher. These articles state:

"Article **4(d)** Extra Relief Service
Relief requirements of less than four days per week may be performed by extra dispatchers who will be paid the daily rate of each Dispatcher relieved."

"Article **5(b)** Time Begins
Seniority as train dispatcher will date from the time service as such is first performed as a train dispatcher. This rule will not change the seniority date established prior to the effective date of this agreement."

According to the Organization, Claimant was "transferred" to the position of train dispatcher from **1830** hours to **2330** hours on October 1, **1979**. During that time, he performed all the **duties** of a train dispatcher. Thus, the Organization argues that **he was clearly** entitled under Articles **4(d)** and **5(b)**, to appropriate compensation and seniority date for filling the position of train dispatcher on that date.

Carrier, on the other hand, disagrees that Claimant was "transferred" to the position of train dispatcher on October 1, **1979**. Rather, it argues that Claimant was a "trainee" at that **time**, who was merely "posted" on the New Hampshire-Fitchburg Route under the jurisdiction of Train Dispatcher **Hansbury** and Assistant Superintendent Gallant.

Furthermore, Carrier contends that trainees cannot actually **perform** service as a dispatcher until they pass an examination on the Rules for the Government of the Operating Department. In fact, Claimant failed such an exam on October **18, 1979**, though he did pass another exam on October 25, **1979** and was assigned seniority standing on that date.

Finally, Carrier maintains that it has followed the same procedures with respect to Train Dispatcher R. J. Palleschi, yet the Organization never protested his seniority date. Thus, Carrier asks that the claim be denied.

Because this dispute involves the seniority standing of Claimant **Salemmi** vis-a-vis Train Dispatcher Palleschi, the Board caused a "To All Concerned" notice to be issued advising of the **pendency** of this dispute and scheduled a date certain on which to hear objections from anyone who might have believed that they had an interest in this dispute. No one came forward. Therefore, we will dispose of this dispute on the basis of the record as presented by the Petitioner and Respondent.

The claim must be sustained. First, Carrier's contention that Claimant was merely "posted" on the New Hampshire-Fitchburg Route is not properly before this Board. It was not raised during the handling of this claim on the property.

As we have previously noted, "Issues and contentions not raised in the handling on the property may not be raised for the first time before this Board." Award 22893. (See also Awards 17329, 20607, 21394, 21447).

Second, it is clear from the record that Claimant actually performed the work of **Train** Dispatcher from 1830 hours to 2330 hours on October 1, 1979. In fact, at the end of his tour, he transferred his assignment to the Train Dispatcher who relieved him.

Articles h(d) and 5(b) are clear and **unambiguous**. The key factor in both is the performance of work as a dispatcher. Claimant in this case has met that key factor. In fact, this is consistent with the handling which was accorded Train Dispatcher Palleschi inasmuch as Palleschi was given his seniority date on the first day he performed work as a Train Dispatcher - October 20, 1979.

FINDINGS: The **Third Division** of the Adjustment Board, after **giving** the parties to this dispute due notice of hearing thereon, and upon the whole record **and** all the evidence, finds **and** holds:

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**.

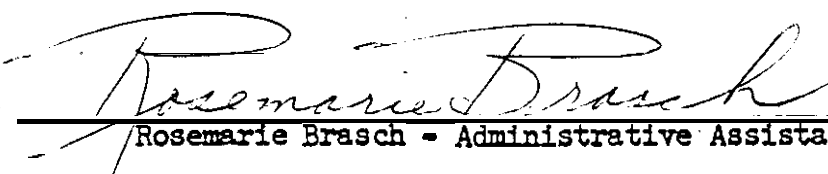
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting **Executive** Secretary
Rational **Railroad Adjustment** Board

BY


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.