

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25811
Docket Number TD-23998

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM:

"It is the claim of the American Train Dispatchers Association that the Company violated the Agreement dated July 21, 1973, Third Order of Call when it failed to properly protect Mr. Halls' vacancy on July 17, 1979 and shall now be required to pay D. K. Shreffler one day's pay at trick train dispatcher rate for the day he lost July 17, 1979 account not used to protect third trick train dispatching position on Georgia Railroad Train Dispatching District as a result of improper handling of Mr. Deason and the filling of Mr. Halls' vacancy."

OPINION OF BOARD: This dispute concerns the Carrier's right to blank unilaterally the position of Assistant Chief Train Dispatcher when the regularly assigned employee is absent. On July 17, 1979, A. L. Hall, the regularly assigned third shift (11:30 P.M. to 7:30 A.M.) Assistant Chief Train Dispatcher at Carrier's Atlanta, Georgia office was absent. There were no qualified Extra Train Dispatchers available. The Carrier blanked the position. On July 21, 1979, Claimant, an Extra Train Dispatcher, submitted a time return with the following notation: "Claim 8 hours account Al Hall's job being blanked 7-17-79."

Although it is undisputed that Claimant was not qualified to fill the position of Assistant Chief Train Dispatcher, the Organization argues that, had the Carrier observed the order of call contained in the Memorandum Agreement of June 21, 1973, which applied "[w]hen extra Train Dispatcher service is required," G. W. Deason, who was regularly assigned to work the Georgia Railroad territory third shift (11:00 P.M. to 7:00 A.M.) position in the same office would have filled the vacancy created by Mr. Hall's absence pursuant to the third order of call. Claimant would then have filled the vacancy on the Georgia Railroad position which could have been created by Mr. Deason's assignment to the Assistant Chief position. Claimant was concededly qualified for the Georgia Railroad territory position.

The Organization argues that the Carrier may not blank Train Dispatcher positions in the absence of a provision in the applicable Agreement permitting it to do so. Conversely, it argues that Article IV (h) of the Agreement, which provides in part that:

"(1)...Extra train dispatchers... will be required to perform, in seniority order, all extra work for which available..."

together with the Memorandum Agreement described above, require the Carrier to fill all temporary vacancies among the Train Dispatchers.

The Organization points out that, when the parties have agreed that the Carrier has such a right, they have specifically so provided, as, for example, in the Jury Duty provision of the National Agreement of May 30, 1979, which provides that:

"(4) When an employee is excused from railroad service account of jury duty the carrier shall have the option of determining whether or not the employee's regular position shall be blanked notwithstanding the provisions of any other rules."

The Organization argues that, where a specific exception is not provided for, none exists. The Organization points out that the Carrier, in the same National Agreement, sought unsuccessfully to obtain an additional exception for bereavement leave.

Three months after the date of the instant claim, the parties entered into a Memorandum Agreement dated October 15, 1979 which specifically permits the Carrier to blank the Assistant Chief Dispatcher position which is the subject of this dispute on Saturdays and Sundays. The Organization argues that the Carrier would not have sought the right to blank the position on rest days if it already had the right to do so.

The Organization submitted in support of its position Award Number 1 of Public Law Board No. 1594, between these same parties. That case involved the blanking of several Train Dispatcher positions on December 25, 1974 and January 1, 1975. Although the Public Law Board declined in that case to decide whether the applicable Agreement permitted or prohibited the temporary blanking of positions, it found that the Carrier could not blank Train Dispatcher positions on holidays because such blanking would be inconsistent with the apparent intent of the parties in agreeing to increased holiday pay in the 1965 and 1971 National Agreements. The principle established in that Award was applied in Third Division Award No. 22206 to stand for the Rule that the Carrier did not have the unilateral right to blank a position which was vacant due to a vacation day. The Organization asks that the Board further extend the Board's reasoning to this case.

The Carrier raises several defenses. First, it argues that Claimant was not qualified to fill Mr. Hall's position and, therefore, that he is not a proper Claimant. Second, it asserts that, in any event, Mr. Deason was unavailable to fill Mr. Hall's vacant position because he was already at his regularly assigned position when the Assistant Chief Dispatcher's shift began. Finally, the Carrier argues that, in the absence of a specific Rule prohibiting it from doing so, it has the prerogative to blank positions when the regularly assigned employee is absent.

The Board is not persuaded by Carrier's arguments. Claimant's entitlement to the shift is concededly derivative of Mr. Deason's right to fill the Assistant Chief position under the third order of call, which would thereby have created the vacancy to which Claimant would have had a right to fill. However, the fact that Carrier's violation of the Agreement more directly affected an employee other than Claimant does not insulate the Carrier from the derivative, but still directly ascertainable, consequences of its action.

With respect to Carrier's argument that Mr. Deason would have been unavailable for call to fill the vacancy, in any event, because he was already working at his regularly assigned position, the Memorandum Agreement clearly contemplates calling in Train Dispatchers who may be regularly assigned to other dispatching positions. The Carrier did not claim, or submit any evidence to support a finding that it was not notified of Mr. Hall's absence in time to reassign Mr. Deason to the Assistant Chief position.

The issue at the core of this Claim is whether the Carrier has the unilateral right to blank an Assistant Chief Train Dispatcher position in the absence of the regularly assigned employee. The National Agreement of May 30, 1979 does not directly address the question. Neither the Carrier nor the Organization have included in the record dispositive evidence of the intent of the parties with respect to the blanking of positions or of the practice of the parties in interpreting and applying the applicable Agreements.

The inclusion in the National Agreement of the Jury Duty Rule, which specifically grants Carrier the right to blank Dispatcher positions in one limited circumstance, suggests by clear implication that the Carrier lacked an unconditional right to blank positions in other circumstances. The Carrier's unsuccessful attempt to obtain similar language for absences due to bereavement leave suggests a similar lack of general authority. In addition, the Memorandum Agreement of October 15, 1979, executed three months after the filing of the instant claim, gave Carrier the right to blank the Assistant Chief Dispatcher position in the Atlanta office on Saturdays and Sundays (the rest days of the regularly assigned dispatcher). Such an agreement would be unnecessary if the Carrier already possessed the right to blank the position.

Finally, the Board has, in the past, had occasion to review the right of carriers to blank Dispatcher positions in the absence of express contractual authority or past practice allowing it to do so. In Third Division Award 22206, the Board determined that claims, including one for blanking a position during the absence due to illness of the regularly assigned employee, should be sustained on the basis of Awards Nos. 1, 2, and 3 of Public Law Board No. 1594. The Division noted in that case that the claims were virtually identical to those which had been brought before the Public Law Board and held that, in the absence of compelling reason to overrule those prior awards, precedent should be followed.

The implication from the evidence in the record is that the Carrier lacked a general right to blank the position. There is in the record no compelling reason to overturn the prior precedent which has so held. For those reasons, the Claim 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1985.