

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claims on behalf of E. A. Cratin for December 21, 22, 23, 30, 31, 1985; January 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 27, 28, 29, 31; February 4, 5, 6, 7, 10, 11, 12, 13, 18, 19, 20, 25, 26, 27, 28; March 3, 5, 6, 10, 11, 13, 14, 19, 20, 21, 25, 26, 27, 28 and 31, 1986 for eight (8) hours pay each at Assistant Chief Train Dispatcher's Rate for dispatching work that was formerly done by Asst. Chief Train Dispatcher and Train Dispatcher in the Philadelphia Division Office until November 11, 1985 when division boundaries were changed.

Claims were presented in accordance with Rule 2 - Seniority. In particular with that part of the paragraph of the consolidation notice dated December 7, 1984, 'the Consolidation described above will not result in any reduction of train dispatching territory and there will be no reduction in the number of train dispatchers positions.'"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This dispute concerns an extensive series of claims arising from the Carrier's action in realigning the operating division boundary between New York and Philadelphia from Milepost 57 at Trenton, New Jersey to Milepost 76 at Holmesburg, Pennsylvania Dispatching responsibility for this trackage was transferred from Dispatching responsibility for this trackage was transferred from Dispatching District "A" in Philadelphia to Dispatching District "B" in New York. The Claimant is an Assistant Chief Dispatcher headquartered in Philadelphia.

The Claimant initiated claims on February 19, 1986, for a series of dates commencing November 13, 1985. Claims for later dates were initiated on April 3, 1986. Prior to presentation to this Board, these identical claims were consolidated. In so doing, the Organization dropped those claims for dates more than 60 days prior to February 19, 1986, and also corrected several other dates.

The Board does not find, as the Carrier contends, that the dispute before the Board is substantially different from that presented on the property. The issue as to the legitimacy of the Carrier's method of transferring the dispatching territory from Philadelphia to New York was never in doubt, and the citation of the dates is secondary to the issue itself.

The Carrier also contends that only a claim within 60 days after the initial dispatching territory change would have been valid (if timely filed). Since the change was a continuing one, the Board will not reject the consolidated claim solely on the basis that the claims for earlier dates were untimely. While remedy, if any, going back more than 60 days would be inappropriate, the issue deserves resolution on its merits.

By way of background, the Carrier on December 7, 1984, gave more than 90 days' notice to the Organization of the "consolidation of the Baltimore and Philadelphia Train Dispatchers offices." In the letter of notification, the Carrier stated:

"The consolidation described above will not result in any reduction of train dispatching territory. . ."

On October 8, 1985, the Carrier gave notice of less than 90 days of the change which is the basis of the dispute here under review. The Carrier stated in pertinent part as follows:

"This is to advise you that it is the Carrier's intention to realign the operating divisions on or about November 11, 1985, by establishing the division boundary between the New York and Philadelphia divisions at MP. 76, east of Holmes. Therefore, this will serve as the requisite thirty (30) day notice of the change in the respective territories in accordance with the provisions of Rule 2 (h)1 of Part I of the Schedule Agreement.

The recent consolidation of the Baltimore and Philadelphia divisions has made it desirable to consolidate the operating, reporting, and administrative functions for the territory between Trenton (MP.57) and MP.76 under the New York division. That portion of dispatching district "A" in Philadelphia encompassing the territory between MP.76 and MP.57 will be transferred to and made part of dispatching district "B" in New York. . . .

The proposed changes will not result in the elimination or addition of dispatching districts in either Philadelphia or New York."

The referenced Rule 2 - Seniority reads in part as follows:

"(h) 1. When dispatching territories are changed within an office, not less than thirty (30) days advance notice thereof shall be given in writing by the Director of Labor Relations to the General Chairman and conference thereon shall be had at the request of either party.

2. When dispatchers offices are to be consolidated, or part of a dispatchers territory is to be transferred to another office, not less than ninety (90) days notice in writing shall be given to the General Chairman, by the Director of Labor Relations, in cases that will require a change in a Train Dispatchers residence."

In the Board's view and concurring with the Organization, Rule 2 (h) 1, on which the Carrier relies in its letter, is inapplicable since the territory change was not "within an office" but, rather, between Philadelphia and New York. On the other hand, the Board finds equally inapplicable the Organization's contention that 90 days' notice of the change was required under Rule 2 (h) 2. That section is applicable, as stated in the Rule, "in cases that will require a change in a Train Dispatchers residence." Such did not occur here.

The Organization additionally relies on the Carrier's assurance in its December 7, 1984 letter (involving the Baltimore-Philadelphia consolidation) that such "will not result in any reduction of train dispatching territory." The Organization argues that the Carrier has violated its own commitment when it did reduce the Philadelphia office territory 11 months later.

The Organization's position is understandable, in view of the Carrier's October 8, 1985 letter, quoted above, which states that the "recent consolidation of the Baltimore and Philadelphia divisions has made it desirable" to initiate the further change here under review.

The Carrier, however, alleges that the change was made for the purpose of consolidating "the operating, engineering, reporting and administrative functions for the territory" (i.e., as between New York and Philadelphia) and was not a result of the Philadelphia-Baltimore consolidation. The Carrier alleges that the Organization was so advised in conference on the dispute. Examination of the record fails to disclose that the later change arose as a direct consequence of the earlier change. Other factors involving the relationship of the New York Division to the consolidated Philadelphia-Baltimore Division were involved.

As to Rule 2 (h) 1, the Carrier did provide 30 days' notice, even if the change was not "within an office." The 90-day notice under Rule 2 (h) 2 is not applicable, since there was not a required change in residence. The fact that no reduction in Train Dispatcher positions occurred in the Philadelphia-New York realignment is also of some significance. In the absence of a demonstrated violation of Rule 2 (h), the claim must fail.

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Award No. 27602
Docket No. TD-27574
88-3-87-3-185

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1988.