

(David R. Scott
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"(a) The CSX Transportation Corp. violated its scheduled Agreement with the American Train Dispatchers Association specifically Article 5(f) and Article 11(b) of Appendix 2 signed October 1, 1981. The Carrier also violated Memorandum Agreement signed at Huntington, W. Va., July 19, 1984 and other rules which may apply when it allowed John P. Allen, former Train Dispatcher of the Hinton-Raleigh Division, to remain at Hinton and refuse transfer to Huntington, W. Va.

(b) As a result of John P. Allen being allowed to remain at Hinton instead of accepting position at Huntington for which his seniority entitled him, I was placed in a worse position with respect to compensation. Now the Carrier has allowed John P. Allen to accept position at Huntington, W. Va. The work that Mr. Allen performed at Raleigh, W. Va. from July, 1984 until November, 1985, resulted in my being deprived of due employment. All of these actions clearly show I was put in a worse position in regard to compensation.

(c) Because of aforementioned violations, the Carrier shall allow me a protective rate of \$133.87 as provided for under Appendix 2 of the ATDA Agreement dated October 1, 1988."

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 employes 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.

Claimant alleges that the Carrier violated Article 5(f) and 11(b) of Appendix 2 of the October 1, 1981 Agreement as well as the Memorandum of Agreement dated July 19, 1984, when it allowed Mr. J. P. Allen, Train Dispatcher on the Hinton-Raleigh Division to remain at Hinton, West Virginia, and not transfer to Huntington, West Virginia.

On May 31, 1984, the Carrier served notice on the Organization of its intent to close several train dispatching offices on its West Virginia Division and transfer all train dispatching functions to a new centralized office in Huntington, West Virginia.

The Organization and Carrier met, and on July 19, 1984, signed an Implementing Agreement to cover the proposed transfer of work. Section 1(a) of the Agreement set forth those positions allocated to the three train dispatcher seniority districts from which work was to be transferred to the new office. Section 1(c) allowed for the remaining positions to be allocated to all the Seniority Districts combined.

Sections 1(b) and 1(c) of the July 19, 1984 Memorandum of Agreement allowed first preference to the new positions at Huntington to employees entitled to protective benefits under the Organization's Protective Agreement. Section 1(d) allowed the Carrier to force in reverse seniority order protected Train Dispatchers to take unfilled jobs, if any, at the new office or lose protection. Section 1(e) of the Agreement also allowed the Carrier the right to assign non-protected Train Dispatchers at Huntington in the event there were positions left unfilled after all protected Train Dispatchers were used.

Claimant argues that the Carrier should have required Mr. Allen, a senior Train Dispatcher, to transfer to Huntington in September, 1984, which would have allowed him to work as a Train Dispatcher at Raleigh, West Virginia, until the closure of that office in November, 1985, thus enabling him to become a protected employee.

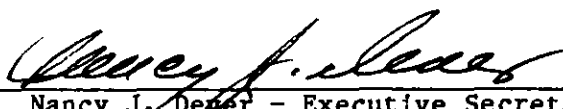
After a thorough consideration of the facts as set forth in the record, we conclude that Section 2(c) of the Implementing Agreement provides that the names and seniority dates of protected Train Dispatcher's, including Mr. J. P. Allen, continue to be listed on their present seniority Rosters until recalled as Train Dispatchers at Huntington under the provisions of Section 11(b), Appendix 2, of the October 1, 1981, Protective Agreement. It further provided that employees such as Mr. Allen, who subsequently accepted a position at Huntington under the provisions of Section 11(b), would have their seniority dates transferred and dovetailed onto the new roster at that location upon the date of the transfer. Section 11(b) deals with the filling of vacancies and the rule contemplates that protected employees can only be forced in reverse seniority order. It further provides that the senior unassigned protected employee may make application for a position or permanent vacancy which subsequently arises. Although Mr. Allen accepted a position offered to him under Section 11(b) he was not required to do so and could have waited until he was the junior protected Train Dispatcher still unassigned before he would have been faced with having to accept a position at Huntington or lose his protection.

Claimant is incorrect in his contention that Mr. Allen was improperly allowed to stay on a position at Raleigh until that office was closed in November, 1985, even though his seniority would have allowed him to transfer earlier. The Claimant was not adversely affected by Mr. Allen opting to remain at Raleigh. The Claim being without foundation, must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deper - Executive Secretary

Dated at Chicago, Illinois this 31st day of July 1989.