

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28565  
Docket No. TD-28415  
90-3-88-3-207

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(CSX Transportation, Inc.  
(former Louisville & Nashville Railroad)

STATEMENT OF CLAIM:

"(a) CSX Transportation, Inc. ('Carrier') violated its (former L&N) Train Dispatchers' basic schedule Agreement effective 12:01a.m. December 15, 1986 when it permitted and/or required Train Dispatchers in its Jacksonville, Florida office who are not covered by said Agreement to exercise primary responsibility for the movement of trains on the Americus, Grimes, Enterprise, Richland and Dothan Subdivisions of the Mobile Division.

(b) Because of said violation, the Carrier shall now compensate the senior extra Train Dispatcher available in the Mobile office as of the starting hour of each shift, one (1) day's pay at the rate applicable to Trick Train Dispatchers, starting with first shift on December 15, 1986 and continuing on each shift and date thereafter until said violation ceases.

(c) In the event there are no extra Train Dispatchers available under the conditions set forth in paragraph (b) above, the claim shall be payable to the senior regularly assigned Train Dispatcher in the Mobile office who is available at such times.

(d) The identities of individual Train Dispatchers eligible for the compensation claimed in paragraphs (b) and (c) above are readily ascertainable from the Carrier's records, and shall be determined by a joint check thereof in order to eliminate the necessity of presenting a multiplicity of daily claims."

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 waived right of appearance at hearing thereon.

The Organization contends that when Carrier permitted and/or required train dispatchers in its Jacksonville, Florida, office who were not covered by the former Louisville & Nashville Railroad Agreement to exercise primary responsibility for the movement of trains on the five subdivisions placed under the Mobile Division's supervisory control effective December 15, 1986, said action violated the former L & N Train Dispatchers' Agreement. The subdivisions transferred were Americus, Grimes, Enterprise, Richland and Dothan.

Specifically, the Organization maintains that while the duties of Chief, Night Chief, and Assistant Chief Dispatcher associated with these subdivisions were transferred to the Mobile Division, Carrier continued the Trick Train Dispatcher duties in the Jacksonville office. Accordingly, since the Mobile Division's seniority district was enlarged, the Organization argues that the duties of Trick Train Dispatcher accrued to employees under the former L & N Agreement.

In response, Carrier points out that when it realigned its Divisional boundaries in December, 1986, it was necessary to adjust some of the territory from one Division to another. Consequently, with new Division alignments it was not unusual for a Division to encompass more than one "Railroad" on that Division. This meant that employees covered under the former Seaboard Coast Line Railroad Agreement and the Louisville and Nashville Agreement were working on the Mobile Division. Moreover, it observes that the SCL Trick Train Dispatchers reported to and were supervised by the Chief Dispatcher in Jacksonville, Florida. In effect, since the Divisional alignment was merely an administrative change, Carrier argues that it was not required to negotiate with the Organization.

In considering this case, the Board concurs with Carrier's position. There has been no clear cut indisputable evidence that the Divisional realignments resulted in separate definable seniority districts and no evidence that L & N employees worked exclusively on the Mobile Division. As a result of the realignment, specifically, the transfer of the five subdivisions, there has been no correlative showing that it was incumbent upon Carrier to maintain a complete separation of Divisional activities, particularly, where there was a distinct commingling of SCL and L & N employees at Mobile. Since the Divisional realignments were not akin to the formal type consolidation of operations requiring the negotiation of seniority protection and since the realignments were ostensibly proper, the Board finds no justification for sustaining the Organization's Claim. Argument in and of itself is not a substitute for probative evidence.

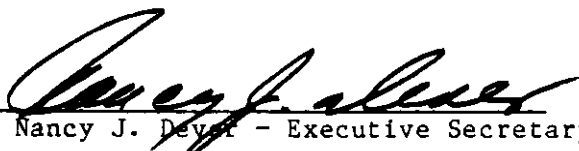
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Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.