

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29403
Docket No. TD-29859
92-3-91-3-228

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(American Train Dispatchers Association

PARTIES TO DISPUTE: (CSX Transportation, Inc.

STATEMENT OF CLAIM:

"(A) CSX Transportation, Inc. ('Carrier' or 'CSXT') violated its Train Dispatchers' basic schedule agreement applicable in the Jacksonville centralized train dispatching center ('JCTDC') when, on May 11, 1990 it canceled a bulletin dated May 7, 1990, covering a vacancy on position 4UDD104 Console 1CJ Trick Train Dispatcher Zone E Relief 524/524, known to be temporarily vacant for more than thirty (30) calendar days at the time of its inception on April 30, 1990.

"(B) Because of the loss of the right to obtain the position described in paragraph (A) above in accordance with his seniority, CSXT shall now compensate the senior applicant for such position Mr. M. M. Brabham

- (1) one (1) day's pay at the pro-rata rate applicable to such position for each date beginning on May 14, 1990 and continuing on each date thereafter for the next six (6) days and,
- (2) one day's pay at the time and one-half rate applicable to such position beginning on the seventh day continuing one each date thereafter until the regular assigned incumbent resumes duty thereon, in addition to any other compensation claimant Mr. M. M. Brabham may have for such dates."

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.

Because the incumbent of Position 4U0D104 announced that he would be absent from work for six weeks effective April 30, 1990, the Carrier, on May 7, 1990, advertised for bid a temporary vacancy. Four days later the bulletin was canceled.

On June 18, 1990 a claim was submitted on behalf of the "senior applicant for the position" for one day of pay at the pro-rata rate for six days beginning on May 14, 1990, (the date the bulletin would have closed), and a day at time and one-half from the seventh day until the regular incumbent resumed his duty. In response, the Carrier advised, on June 22, 1990, that it had only bulletined the position at the Organization's request. It agreed that the Claimant was the senior applicant, but stated that he "... was not qualified to take over that assignment" and he could not have qualified before the incumbent returned to work assignment.

In an appeal response on July 13, 1990, the Carrier once again raised the question of the Claimant's qualification "...to immediately take over the duties." It also added that none of the applicants were qualified and the bulletin was canceled.

The Organization appeared to agree that the Claimant was not qualified because, on September 15, 1990, it stated that said factor "...does not allow the Carrier to deprive him the right to exercise his seniority to obtain a desired vacancy." It also argues that the Carrier should have assigned the Claimant and given him the opportunity to qualify.

Under Article 6 (a) of the Rules Agreement, temporary vacancies (for more than thirty days) shall be bulletined for six days and assignments are to be made within six days after the bulletin closes.

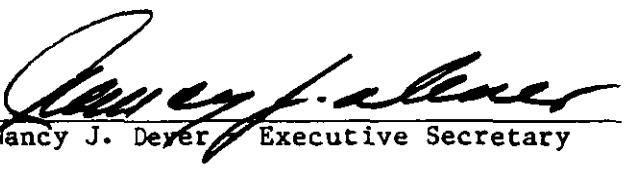
Initially we note that the Carrier did have notice that the vacancy would be available for more than thirty days and there was an obligation to post the bulletin. Carrier did so, although the time frames are a bit at odds with the Agreement. Nonetheless, the Claimant was admittedly not qualified to perform the duties at the time. In the circumstances here, where the vacancy was of a very short duration, we find nothing stated in the Agreement to suggest that Carrier must award a vacancy to an applicant who will not be able to perform the duties.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer, Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.