

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29521
Docket No. TD-29555
93-3-90-3-500

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(American Train Dispatchers
Association)

PARTIES TO DISPUTE: (
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

"#1 - CLAIMS OF R.W. LINNA, 09/12/89 ET AL. SYSTEM DKT. TD-18

<u>CLAIMANT</u>	<u>CLAIM DATES</u>	<u>POSTING EMPLOYEE</u>	<u>LOCAL CASE</u>
C.W. Ernst	9/12/89	GAD #13 R.H. Blaha	3090200025
C. Humphreys	9/11-12/89	GAD # 3 C.J. Welcha	3090200026
E.R. Shalda	9/ 8-9,13-15	GAD # 2 C.L. Duncan	3090200027
E.L. Cyphers	9/ 5-6/89	GAD #13 L.E. Tice	3090200028
R.A. Dewey	9/11-12/89	GAD #15 R.G. Kluce	3090200029
K.S. Davis	9/14/89	GAD #13 L.E. Tice	3090200030
S.P. Biggs	9/04/89	GAD # 3 L.E. Tice	3090200031
T.E. Zogaib	9/05/89	GAD # 8 W.E. Bilanz	3090200032
D.L. Biggs	9/04/89	GAD # 8 W.E. Bilanz	3090200036
B.J. Norris	9/04-05/89	GAD #15 R.J. Kluce	3090200037
		Rlf. #5 Temporary	
D.J. Hake	9/02,12-23/89	GAD #12 R.H. Blaha	
	9/12-13/89	GAD #14 B.F. Burger	3090200038
B.J. Norris	9/18-19/89	GAD #15 R.G. Kluce	3090200039
E.L. Cyphers	9/18/89	GAD #13 L.E. Tice	3090200041
C.W. Ernst	9/26/89	GAD #13 R.H. Blaha	3090200044
B.J. Norris	9/26/89	GAD # 2 C.L. Duncan	3090200045
E.L. Cyphers	9/26/89	GAD #13 L.E. Tice	3090200046
J.L. Farthing	9/24-26/89	GAD #15 R.G. Kluce	3090200047
J.F. Ryan	9/22-25/89	GAD #13 R.H. Blaha	3090200048
C. Humphreys	9/25-26/89	GAD # 3 C.J. Welcha	3090200049
T.E. Zogaib	9/22/89	GAD #11 F.E. Payne	3090200050

#2 - CLAIM OF C. HUMPHREYS, 9/12/89, SYSTEM DKT. TD-20

<u>CLAIMANT</u>	<u>CLAIM DATES</u>	<u>POSTING EMPLOYEE</u>	<u>LOCAL CASE</u>
C. Humphreys	9/19/89	GAD #3 C.J. Welcha	3090200042"

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.

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

Parties to said dispute waived right of appearance at hearing thereon.

This case consists of the claims of several train dispatchers in the Carrier's Dearborn office covering various dates during September, 1989. On each claim date, the particular Claimant seeks an additional one hour of pay at the straight time rate for instructing or "posting" Guaranteed Assigned Dispatchers under Rule 10, Section 7 which reads:

"When prospective or extra employees are posting, the train dispatcher who instructs for the preponderance of the time shall be allowed one (1) hour additional pay at the straight time rate. This rule will not apply when other train dispatchers are posting or breaking in."

Pursuant to the March 7, 1985 Memorandum of Agreement, a Guaranteed Assigned Dispatcher position fills vacancies and performs extra work. An applicant who is awarded a Guaranteed Assigned Dispatcher position, but is not qualified for all positions in the particular dispatching office, must become qualified on all positions or be disqualified from the Guaranteed Assigned Dispatcher position. On the claim dates in this case, there is no dispute that Claimants were posting Guaranteed Dispatchers on positions in the Dearborn office with which they were not familiar and not qualified. All of the postees had become qualified on at least one desk in the office and so that Carrier used the Guaranteed Assigned Dispatchers to fill vacancies and perform extra work on desks for which they were qualified. The Guaranteed Assigned Dispatchers were posting on unfamiliar desks on days they did not fill relief vacancies or perform the extra work on desks for which they were previously qualified.

The Organization alleges that the March 7, 1985 Agreement, treats Guaranteed Assigned Dispatcher positions akin to extra employees and because an employee can be assigned to the position without being qualified, the Organization also characterizes a not yet fully qualified Guaranteed Assigned Dispatcher as a prospective employee. The Carrier defends the claim by relying on the last sentence of Rule 10, Section 7. The Carrier points out that the Guaranteed Assigned Dispatchers hold train dispatcher seniority and are qualified to work one or more desks in the Dearborn office and, thus, they are neither prospective employees, nor extra employees within the meaning of Rule 10, Section 7.

Several years ago, this Division adjudicated a similar, if not identical, dispute between the same parties over the proper interpretation and application of Rule 10, Section 7. In Third Division Award 25692, the grieving train dispatcher was posting a guaranteed assigned dispatcher so the latter could become qualified on all territories covered by the Carrier's Chesapeake desks. The Board interpreted Rule 10, Section 7 as follows:

"The language of the Agreement does not directly cover the instant situation. Postee's acquisition of Train Dispatcher seniority occurred solely by award. He had not, at the time of the claim, worked in the craft and was in the process of qualifying as a Train Dispatcher, subject to loss of his awarded position and seniority in the craft if he failed to do so. There is nothing in the record to indicate that Postee would require less instruction than any other employee who had never previously worked in the Train Dispatcher craft.

The record indicates further that the exception upon which the Carrier relies had been intended to excuse the Carrier from paying extra compensation for instruction of previously qualified Train Dispatchers who might need to requalify for a particular assignment. That is not the case in the present claim, where Postee's previous qualification was as an AMD. While the Movement Director/AMD craft was merged into the Train Dispatcher craft for purposes of seniority, Postee's previous AMD qualification was clearly not sufficient to qualify him for a Train Dispatcher position.

Under such circumstances, the Board concludes that the purpose of Rule 10, Section 7 of the Agreement is better met by treating Postee as a prospective or extra employee for purposes of the single hour of instruction pay, to which the Board holds Claimant is entitled."

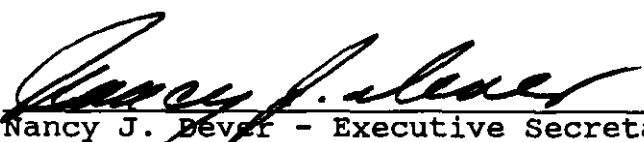
The Carrier, in this case, raises the same defenses that it raised in opposition to the claim covered by Award 25692. Under the doctrine of res judicata, this Board must follow the dispositive precedent on this property and again, reject these defenses. Furthermore, Carrier has not come forward with evidence or argument showing that Third Division Award 25692 was palpably erroneous.

Therefore, we sustain this claim for the reasons more fully set forth in Award 25692.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.