

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29789
Docket No. TD-30379
93-3-92-3-128

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Chicago & Illinois Midland Railway Company

STATEMENT OF CLAIM:

- "(a) The Chicago & Illinois Midland Railway Company ('Carrier' or 'C&IM') violated its Train Dispatchers basic schedule Agreement, including Article II, Section 12 thereof, when it failed to give affected train dispatcher J.H. Dirks not less than forty-eight (48) consecutive hours' advance notice of the abolishment of his 3rd shift Assistant Chief Dispatcher position effective 2:59 p.m. Friday, March 1, 1991.
- (b) Because of said violation, the Carrier shall now allow claimant Train Dispatcher J.H. Dirks two (2) days' pay at the rate applicable to Assistant Chief Dispatchers for March 1 and 2, 1991, in addition to any other compensation he 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 employe 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.

Claim was submitted by the Organization alleging the Carrier violated Article II, Section 12 of the Agreement when it failed to

give Claimant 48 consecutive hours' advance notification of the abolishment of his Assistant Chief Dispatcher position. The record indicates that an abolishment notice was issued by the Superintendent - Chief Dispatcher at 4:00 PM on Wednesday, February 27, 1991 and posted in the Dispatcher's office in the usual and customary manner. The problem herein lies with the fact the Claimant completed his weekly tour of duty at 8:00 AM on February 27 and was not scheduled to return to work until 11:00 PM on Friday, March 1, 1991.

The Organization contends the Carrier failed to give Claimant advance notice of the abolishment and, therefore, the claim for two days' pay at the rate applicable to his Assistant Chief Dispatcher position is in order.

Contrariwise, the Carrier alleges it provided proper notice of the abolishment in accordance with routine procedures by posting the notice in the Dispatcher's office. Furthermore, the Carrier contends the Organization failed to sustain its burden of proof and, in any event, the claim for two days' pay is excessive.

With regard to notification, the parties presented conflicting evidence in many respects. The Carrier alleges that posting the notice in the Dispatcher's office constituted "...the manner by which all bulletins have been posted on the C&IM without exception for dispatching forces...." The Organization responded in affirmation of its claim by entering into evidence a statement from its former General Chairman stating that under the circumstances present herein, affected Train Dispatchers were notified of abolishments by telephone. A second statement from another former Train Dispatcher confirmed telephone notification of abolishments.

As stated many times, this Board cannot and will not act to resolve such conflicts in evidence (Third Division Awards 21423, 26817, 28790 and 29270). Normally, an irreconcilable dispute in facts would lead this Board to dismiss the claim. In this unusual case, however, our focus is narrowed to one aspect of the dispute upon which both parties agree. At 2:00 AM on March 1, 1991, Claimant, for reasons unexplained in the record, appeared in the Dispatcher's office and observed the posted abolishment notice. Claimant's unexplained appearance in the middle of the night seems unusual, but we may not speculate as to why he came onto the property. We can conclude from the record, however, that it was at this time that Claimant was technically notified.

Under these peculiar circumstances, we cannot ignore the Carrier's unrefuted mitigation argument that "...all occupants of dispatcher positions were well aware of the job abolishments...." Claimant obviously had at least 21 hours' advance knowledge of the

abolishment, whether or not official written or verbal notice had been given in a timely fashion as required by the Agreement.

Given the fact that the abolishment notice was posted after Claimant left the property and was to be effective prior to his scheduled return to the property, as a courtesy, if for no other reason, someone in the Dispatcher's office should have made an attempt to telephone the Claimant to advise him that his position had been abolished. This is particularly so given the small number of Dispatchers in Carrier's operation.

Notwithstanding the abolishment of his position, the Board notes that Claimant worked at 11:00 PM on March 1, 1991, albeit on a lower rated Train Dispatcher's position. As such, this Award will limit damages to the difference between the rate of the abolished Assistant Chief Dispatcher position and the rate of the Train Dispatcher position for the two claim dates. In so finding, however, the Board emphasizes that this remedy applies to the peculiar facts and circumstances of this claim and is not intended as general guidance.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin sk
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.