

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31838
Docket No. TD-31518
96-3-93-3-495**

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

**(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Appealing the claims of G. T. Mannix, et al, requesting one days pay at the applicable rate of pay for the STO-CTD position when, on various dates the carrier failed to properly fill the STO-CTD position as required by Scope Rule 1 and the June 16, 1989, Letter Agreement."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute consists of 11 individual pay claims. They each allege that Carrier failed to fill temporary vacancies with Agreement-covered Train Dispatchers.

The Scope Rule of the effective Agreement reads, in pertinent part, as follows:

"A qualified train dispatcher from the seniority roster involved will be used to relieve the Chief Dispatcher during vacation periods and other temporary vacancies and such train dispatcher will be compensated at the straight time rate applicable to the position worked."

To consolidate existing dispatching offices, the parties negotiated a June 16, 1989 Letter Agreement providing, among other things, that each of six divisional dispatching offices would establish at least one and, if needed, a second STO-CTD position. The STO-CTD positions are subject to the Chief Dispatcher provisions of the Scope Rule.

The narrow issue involved in each of the claims is whether a rest day constitutes a temporary vacancy within the meaning of the parties' Agreement and the June 16, 1989 Letter Agreement. The Organization contends that rest days do constitute such temporary vacancies and must be filled with seniority rostered Dispatchers. In this regard, the Organization says such positions are seven-day positions and must be filled every day of the week. Carrier's position is that the disputed positions are not seven-day positions. Moreover, it argues that rest day absences do not constitute temporary vacancies.

Both parties have raised other arguments, such as the qualification and identity of the various Claimants, but such matters are tangential to the narrow issue involved here. The parties also cited prior Awards, but careful review of them reveals that none deals precisely with the narrow issue involved. Finally, it is noted that neither the basic Agreement nor the Letter Agreement defines "temporary vacancy" for purposes of the Scope Rule.

Whether a rest day is a temporary vacancy is a question of interpretation of the Agreement. On this record, each of the diametrically opposed positions of each party is plausible. However, each position is founded on assertions only. There is no evidence to support the competing interpretations of either party.

It is well settled, in disputes of this nature, that the Organization bears the burden of proof to establish, through the submission of probative evidence, the prima facie validity of its position. In the absence of such evidence, it must be determined that the Organization has failed to satisfy its burden of proof.

Form 1
Page 3

Award No. 31838
Docket No. TD-31518
96-3-93-3-495

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.