

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32373
Docket No. TD-31864
97-3-94-3-176**

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

**(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers**

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim No. 1

'Consolidated Rail Corporation violated...the current effective agreement...Rule 4, Section 2 (A) and Rule 12 (B) when Carrier refused to allow placement of the senior applicant on the temporary assignment on the first day the Claimant was entitled to work the assignment and then required the Claimant to fill a position on a trick other than the trick to which the Claimant was entitled to work on Saturday, January 16 and Sunday, January 17, 1993. The Carrier shall now compensate Ms. Russell 4 hours compensation at the pro rata rate applicable to the Assistant Chief Dispatcher rate for Saturday, January 16 and Sunday, January 17, 1993...'

Claim No. 2

'Consolidated Rail Corporation...violated the current effective agreement...Rule 4, Section 2 (A) in particular when the Carrier refused to allow placement of the senior applicant on the temporary assignment on the first day the Claimant was entitled to work the assignment. Ms. Russell submitted application for the temporary assignment commencing January 13, 1993 and was determined to be the senior applicant. Ms. Russell was available to start the temporary assignment on Thursday, January 14, 1993 as this was her second rest day of her present assignment. The Carrier shall now compensate Ms. Russell one (1) day of

compensation at the pro rata rate applicable to the trick train dispatcher for Thursday, January 14, 1993..."

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.

At the time of the two claims under review here, Claimant was assigned to the Second Shift "K" Desk, with Wednesday - Thursday rest days. A vacancy existed on the First Shift "C" Desk, with Tuesday - Wednesday rest days. Claimant made application to work the vacant "C" Desk position on a hold-down, as provided in Rule 4 of the Agreement, effective Thursday, January 14, 1993. Carrier determined that she was the senior qualified applicant for the hold-down, but did not transfer her to the vacancy until January 23, 1993, the date a Guaranteed Assigned Dispatcher was available to fill Claimant's position at the straight time rate.

Carrier's refusal to transfer Grievant to the hold-down generated two claims from the Organization. The first seeks additional compensation, under Rule 12(b) for Saturday and Sunday January 16-17, 1993, because Claimant was required to work an assignment other than the one she was entitled to work on those days. The second seeks additional compensation, under Rule 4, Section 2(b) for Thursday, January 14, 1993, because Claimant was not placed on a hold-down she was entitled to work.

Carrier acknowledges that Claimant was entitled to be transferred to the hold down, but says that because an extra expense would have resulted in filling her vacancy it was excused, by the explicit language of the Agreement, from effecting her immediate

transfer. Carrier claims that no employees were available to fill a vacancy on Claimant's regular position at straight time rates.

The operative Rule involved in this matter is Rule 4, Section 2(a). That Rule in pertinent part reads:

"Rule 4 - Selection of Positions

* * *

Section 2. - Temporary Assignments

(a) Temporary positions or vacancies known to be of five (5) or more working days duration will be assigned to the senior qualified applicant who makes written request therefor. When it is known sufficiently in advance that such a temporary position is to be established or that such a temporary vacancy will occur, the applicant must be made not more than six (6) nor less than (3) calendar days prior to the date that the establishment of the position takes effect or the vacancy begins; when not known sufficiently in advance to permit the foregoing procedure to be followed the application must be made within three (3) calendar days after establishment of the position or the occurrence of the vacancy.

The senior applicant will be placed on the temporary assignment on the first day following determination by the proper officer that he is the applicant entitled to such assignment; provided, however, that nothing in this rule shall require that such placement be made effective on a day or days that would entail additional expense to the Company through payment of the overtime rate under this Agreement.

* * *

An applicant assigned to a position or vacancy under the provisions of this section will take the working days and the rest days of the new assignment beginning with the first day he is placed on such assignment.

* * *

Train dispatchers requesting temporary assignments under this section will do so without additional expense to the Company."

Rule 4, Section 2(a) in one instance excuses Carrier from placing the senior applicant on a temporary assignment if additional expense through the payment of overtime is involved, and in a second instance says that Train Dispatchers requesting a temporary assignment will do so without additional expense to the Carrier. The two provisions, fairly read, can only mean that Carrier is excused from placing the senior applicant on a temporary assignment when this would entail additional expense through the payment of the overtime rate to fill the ensuing vacancy in the applicant's regular position. In this matter Carrier has shown that Claimant's vacancy could only be filled at overtime rates. Accordingly, it did not violate the Agreement when she was not assigned to the temporary vacancy.

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 30th day of December 1997.