

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32374
Docket No. TD-31866
97-3-94-3-197**

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:

"Under Rule 2 Section 1 Paragraph 3 and Section 3, and others of the Agreement between Conrail and the American Train Dispatchers Association dated September 1, 1979, I protest the seniority roster for Train Dispatchers for 1991.

My current roster date erroneously shows as January 21, 1990 and should be shown as December 12, 1989. . ."

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.

On February 20, 1996, at the direction of the Board an "All Concerned Notice" was given all employees on the seniority district involved.

Between September 25, 1989 and January 19, 1990, the Claimant was qualifying as a Train Dispatcher in Carrier's Pittsburgh, Pennsylvania, dispatching office. Upon completion of his training period, Carrier assigned Claimant a seniority date of January 21, 1990. On March 11, 1991, Claimant filed a roster protest, contending that his seniority date should be shown as December 12, 1989. Claimant contends that because he "worked alone" for all but one hour of the shift he was posting on that date, account his instructor becoming sick, December 12, 1989 constituted his first day of dispatching service for seniority purposes.

Carrier contends that even though Claimant did not have an instructor present for most of the trick he was assigned to on December 12, 1989, he was still posting on that date, and under the clear and uncomplicated language of Rule 2 posting time is not considered dispatching service for establishing seniority.

The Board concludes that Carrier is correct. Rule 2(b) establishes the manner in which employees will establish their seniority dates. The Rule reads:

"(b) An employee performing dispatching service who has not established a seniority date or an employee entering dispatching service subsequent to the effective date thereof, if not notified prior to completion of the thirtieth day on which he performs dispatching service (not including posting time) that he has failed to qualify, shall be given a seniority date as of the first date on which he performed dispatching (not including posting time) service. When given a seniority date, he may then displace any train dispatcher his junior occupying a position he is qualified to fill, but shall have no claim to service performed by a junior train dispatcher prior to date of such displacement."

The language used within the Rule expressly distinguishes posting time from dispatching service. It not only makes this distinction once, but it does so twice. Repetition often times is done for the purpose of stressing a point. The repetition occurring within Rule 2(b) strongly suggests that the parties wanted to make it abundantly clear that "posting time" would never be considered as "dispatching service" so as to trigger entitlement for the establishment of an initial seniority date for employees newly entering dispatching service. The drafters of the Rule made the point twice.

Claimant was not a qualified Dispatcher on December 12, 1989. On that date he was assigned to post on a position. When the instructor became ill, Claimant's situation did not change because of this illness. He was still a trainee in a posting status. Rule 2 specifically distinguishes this situation, posting time is not considered dispatching service.

The Organization has characterized this case as similar to one covered in our Award 24425, where a trainee was considered to have actually performed the work of a Train Dispatcher when he worked alone for two hours and made a transfer at the end of his tour. In the case covered by Award 24425, the Board allowed a claim that the trainee be paid at the trick Dispatcher rate and that the date worked be recognized for seniority purposes. Award 24425, however, is not precedent in the matter under review here, simply because the Rule before the Board in that case is different from the Rule before the Board in this case.

The Rule involved in the case in Award 24425 read:

"Article 5(b) Time Begins.

Seniority as train dispatcher will date from the time service as such is first performed as a train dispatcher. This rule will not change the seniority date established prior to the effective date of this agreement."

This Rule does specifically exclude posting time, the situation in the Rule we are considering. It is obvious that the Board when considering the claim in Award 24425 did not distinguish posting time from service as a Dispatcher. In that case the Board was not compelled to do so. In this case we are compelled to do so, because the Rule requires that we do so. Accordingly, because the Rule involved in Award 24425 is not the same the Award is of no precedential help.

The claim is without merit.

AWARD

Claim denied.

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ORDER

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

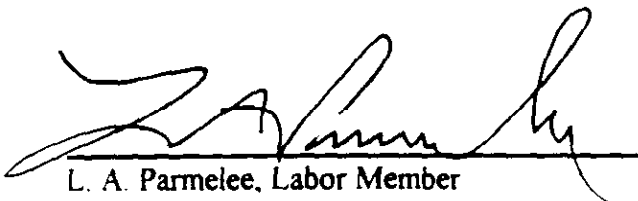
**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of December 1997.

Labor Member's Dissent
Third Division Award No. 32374 (Docket TD-31866)
Referee Fletcher

It is not disputed in the record of this case that on December 12, 1989, due to the illness of his instructor, the Claimant worked by himself, through the majority of the shift. The Carrier had taken the position that such time working on his own was still posting¹ time and thus excluded under Rule 2 of the Agreement. The majority agreed with the Carrier. I cannot.

While the undersigned recognizes the exclusion of "posting" time from dispatching service for the purposes of establishing a seniority date, it defies logic to conclude that an employee can work alone, without an instructor and still be posting. Clearly, working alone, performing all necessary job functions and making decisions without the advise, counsel and guidance of an instructor more closely resembles performing service than posting. The matter should have been resolved based on whether or not the Claimant performed dispatching service (outside of posting) on December 12, 1989. I believe the record indicates that he was.



L. A. Parmelee, Labor Member

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¹ "Posting" is the process by which employees obtain qualifications on job assignments by way of on-the-job training provided by other qualified employees.