Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32575
Docket No. TD-32818
98-3-96-3-138

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

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"(A) The CSX Transportation (hereinafter referred to as 'the Carrier'), violated the effective agreement between the parties including, but not limited, to Article 1, Section b (2) thereof in particular, when it permitted, and/or required, an employee not covered by the scope of said agreement to exercise primary responsibility for the movement of trains, and for the protection of maintenance of way employees, and/or on track equipment between mile post CP 22M and mile post CP 15Y (formerly known as the No. 2 Main Track Mon Subdivision) on each shift on January 16, 1995 and on each shift and date thereafter.

(B) Because of said violations, the Carrier shall now compensate the Senior Train Dispatcher on rest day (1) days pay at the pro rata rate applicable to Trick Train Dispatchers beginning on first shift January 16, 1995, and continuing on each subsequent shift and date thereafter until the violation ceases.

(C) The identities of individual claimant's entitled to the compensation requested in paragraph (B) above are readily ascertainable on a continuing basis from the Carrier's records and shall be determined by a joint check thereof in order to avoid the necessity of presenting a multiplicity of daily claims."

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.

The incident precipitating this claim was Carrier's January 16, 1995 issuance of Bulletin No. 207 advising all concerned that the signal system was removed from a seven mile section of track. The bulletin also advised that the track would become industrial track, with Operating Rule 105 in effect. Effective the date of the bulletin, Dispatchers at the Centralized Train Dispatching facility in Jacksonville were no longer responsible for the movement of trains on the newly-designated "Glassport" industrial track. This dispute arose because the bulletin also stated that the redesignated track would henceforth be under the control of the Yardmaster at Riverton.

By letter of February 10, 1995, the General Chairman filed a claim contending that Carrier had violated Article 1, Section b (2) of the Agreement between the Parties when it transferred control of the track at issue from Dispatchers to a Yardmaster. In his letter, the General Chairman asserted that the Article cited reserved the duty of being primarily responsible for the movement of trains to those covered by that Article. On March 19, 1995 the Cumberland District Superintendent issued Bulletin No. 219, correcting Bulletin No. 207. The latter bulletin eliminated the statement that the redesignated track would be under the control of the Riverton Yardmaster. By letter of March 26, 1995 the Carrier denied the Organization's claim. It was subsequently progressed in the usual manner, including conference on the property on August 21, 1995, following which the issue remained in dispute.

The Organization maintains that Carrier's clear intent was to violate the Scope Rule of the Agreement, and that its corrected bulletin does not absolve it from the

obvious violation. The Carrier's position is that the issuance of the first bulletin was an error, rectified by the second bulletin, and that at no time, despite its error, was control of the track at issue in fact transferred to a Yardmaster. The Organization failed to demonstrate actual transfer of control over the redesignated track to the Yardmaster at Riverton. Had it been able to do so, it would prevail in this case. Alternatively, had the Organization been able to show that while Bulletin No. 207 was in effect, trains actually sought authorization from the Riverton Yardmaster, it would have prevailed for the period of time between the issuance of the "erroneous" bulletin and the issuance of the "corrected" bulletin. The Organization presented no evidence to suggest that trains sought permission from the Riverton Yardmaster to use the track in question during the period between January 16 and March 19, 1995.

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 29th day of April 1998.

CARRIER MEMBERS'
CONCURRING AND DISSENTING OPINION
TO
AWARD 32575, DOCKET TD-32818
(Referee Elizabeth C Wesman)

On rare occasions we find it necessary to file a Concurring and Dissenting Opinion Obviously, we have no quarrel with the Referee's "bottom line" Our reason for filing this document stems from the following quotation, which appears on Page 3 of the Award

> "The Carrier's position is that the issuance of the first bulletin was an error, rectified by the second bulletin, and that at no time, despite its error, was control of the track at issue in fact transferred to a Yardmaster The Organization failed to demonstrate actual transfer of control over the redesignated track to the Yardmaster at Riverton ***Had it been able to do so, it would prevail in this case. Alternatively, had the Organization been able to show that while Bulletin No. 207 was in effect, trains actually sought authorization from the Riverton Yardmaster, it would have prevailed for the period of time between the issuance of the 'erroneous' bulletin and the issuance of the 'corrected' bulletin.***"

We are of the belief that when a Neutral is called upon to interpret an Agreement in light of the action or inaction of the respective parties to a dispute, with regard to a specific fact pattern, that individual is charged with the responsibility of rendering a fair and concise decision based strictly on that fact pattern and the Agreement provisions argued by the parties on the property, consistent, of course, with the prevailing industry and/or on-property precedent

We think it is totally inappropriate to use an Award as a vehicle to coach and counsel Organization representatives as to how they can perfect future claims, as was done in this Award by way of the above-quoted dicta

Michael C. Lesnik

Martin W Fingerhut

Paul V Varga

April 29, 1998