

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32717
Docket No. TD-33197
98-3-96-3-663**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Consolidated Rail Corporation (hereinafter referred to as 'the Carrier') violated the current effective agreement between the carrier and the American Train Dispatchers Department (hereinafter referred to as 'the Organization'), Rule 10, Section 8 in particular when the carrier compensated Mr. Delbridge at a rate less than rate of the assignment. The Carrier shall now compensate Mr. Delbridge \$50.09 for each day claimed that the Carrier has assigned Mr. Delbridge to break in on territory which he is not familiar and has paid him at a lesser rate.

Rule 10, Section 8 reads 'when in the opinion of the Chief Train Dispatcher, it is necessary for train dispatchers assigned to territory with which they are not familiar to break in, compensation will be allowed at the rate of the assignment involved for the number of days directed by the Chief Train Dispatcher to break in.'

Mr. Delbridge is an 'extra train dispatcher'. As one who does not hold a bulletined train dispatcher position and is subject to call for extra work, the Carrier has determined Mr. Delbridge should qualify on another train dispatcher position in the Harrisburg office. The Carrier has assigned Mr. Delbridge to post (break in) on the 'D' desk or territory he is unfamiliar. The Carrier has continued to compensate Mr. Delbridge at \$116.92 per day instead of the rate of assignment involved or \$167.01 Per day.

Mr. Delbridge has established his seniority date as of January 11, 1995 and continues to accumulate seniority.

Mr. Delbridge is subject to the Agreement provisions as an 'extra train dispatcher' and the Carrier is required to compensate him as such.

Mr. Delbridge shall now be compensated for the difference between the rate of the position assigned, \$167.01 and the rate the Carrier has compensated, \$116.92 or \$50.09 for April 5-6-10 and 17, 1995, a total of 4 days claimed."

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.

Claimant was a member of another craft, training to become a Dispatcher. April 5, 6, 10 and 17, 1995, Claimant was posting on the D desk in the Harrisburg office. Carrier paid Claimant at the rate applicable to the other craft.

The Organization contends that Claimant first performed dispatching service on January 11, 1995, and was thus subject to the Agreement on April 5, 6, 10 and 17, 1995. Carrier contends that Claimant was a Dispatcher Trainee until such time as Carrier determined that he was qualified as a Dispatcher and, therefore, was not subject to the Agreement on April 5, 6, 10 and 17, 1995. Carrier relies on Third Division Award 31057. Furthermore, Carrier contends that Claimant did not establish his Train Dispatcher seniority until April 18, 1995, as reflected on the seniority roster and that the

Organization has failed to offer any proof that Claimant even worked on January 11, 1995. The Organization responds that Award 31057 was decided incorrectly.

The parties disagree over whether an employee training to be a Dispatcher becomes subject to the Agreement immediately after the day on which he first renders Dispatcher service. The Board finds it unnecessary to resolve this issue.

As the moving party, the Organization had the burden of proving the date on which Claimant first rendered Dispatcher service. Throughout the handling on the property, the Organization asserted that date to be January 11, 1995, but offered absolutely no proof to support its assertion. Carrier, on the other hand, maintained that Claimant established seniority on April 18, 1995, i.e., after the dates that are the subject of this claim. The only evidence in the record is the seniority roster which shows Claimant with a seniority date of April 18, 1995. Therefore, even assuming that the Organization's interpretation of the Agreement is correct, the claim must fail for lack of proof of the underlying factual allegations.

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 19th day of August 1998.