

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32931
Docket No. TD-33548
98-3-96-3-1039**

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:

"Please accept this as a claim on behalf of the following train dispatchers claimants:

W. Proni Jr.
K. R. Fuqua
E. P. Baker
R. N. Heichel
P. A. Knapik
J. A. Ingraham
J. E. Ireland
D. V. Allen
R. P. Framarin
M. J. Gravelin
M. P. Downey

Under Rule 5 of the ATDA Agreement, each of the above dispatchers were entitled to a call for the special assignments positions covered by P. J. Snow and M. F. Ransbury between the days of April 6, 1995 and April 13, 1995.

P. J. Snow was used on special assignment to fill out CONRAIL LOCOMOTIVE PROJECT (data collection sheet-Asst. Chief Dispatcher Daily Plan) on the following dates, in parenthesis are the respective dispatchers that should have been called:

Thursday April 6, 1995 from 7am-3pm (W. Proni Jr.)
Friday April 7, 1995 from 7am-3pm (E. P. Baker)
Saturday April 8, 1995 from 7am-3pm (P. A. Knapik)
Sunday April 9, 1995 from 7am-3pm (J. E. Ireland)
Wednesday April 12, 1995 from 7am-3pm (R. P. Framarin)
Thursday April 13, 1995 from 7am-3pm (M. P. Downey)

M. F. Ransbury was used on special assignment to relieve P. J. Snow, to continue the LOCOMOTIVE PROJECT on the following dates:

Thursday April 6, 1995 from 3pm-11pm (K. R. Fuqua)
Friday April 7, 1995 from 3pm-11pm (R. N. Heichel)
Saturday April 8, 1995 from 3pm-11pm (J. A. Ingraham)
Sunday April 9, 1995 from 3pm-11pm (D. V. Allen)
Wednesday April 12, 1995 from 3pm-11pm (M. J. Gravelin)
Thursday April 13, 1995 from 3pm-11pm (E. P. Baker)

Each of the aforementioned train dispatchers are entitled to 8 hours overtime for each date noted, account not called in seniority to fill a position. All were on rest days."

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 the six dates identified in the Organization's Statement of Claim, Carrier utilized P. J. Snow and M. F. Ransbury, two employees that were in its Train

Dispatchers training program, to work on a system-wide study to develop a database analyzing past locomotive utilization. The database developed by this study was to be used to revise and improve locomotive utilization. The Organization claimed that the collection of locomotive utilization data is work covered by its Agreement, and is a responsibility of Agreement covered Assistant Chief Train Dispatcher positions. As such, the collection of locomotive utilization data should have been assigned to individuals subject to the ATDA Agreement.

It notes that while Carrier has asserted that the collection of data performed by P. J. Snow and M. F. Ransbury was a one-time project, that could be assigned to any Carrier employee, the work involved is "specifically covered" by Rule 5, Section 2(c), reading:

"An extra dispatcher who is required by the Company to perform other than train dispatcher service, when his qualification, availability, and seniority would entitle him to perform extra train dispatcher service, shall not be required to suffer a loss in compensation or vacation eligibility credit."

Carrier contends that the work performed by P. J. Snow and M. F. Ransbury, on the dates involved in the claim, is not work subject to the Scope Rule of the ATDA Agreement. Simply stated, Carrier argues, Train Dispatchers have no claim whatsoever to the work, and it was privileged to use an employee it chooses for collection of the data needed for the special project.

Carrier's arguments are found to be persuasive, and the Organization has not pointed to a single Rule that even remotely supports its contentions in this matter. The Organization's reliance on Rule 5, Section 2(c) is totally misplaced. That Rule was not intended, as the Organization has argued here, to place the work involved in this claim (or any other work done by a Dispatcher for that matter) within the confines of the Scope Rule of the ATDA Agreement.

A fair reading of Rule 5, Section 2(c) indicates that its only purpose is to insure that extra Train Dispatchers would not lose compensation or vacation credits as a Train Dispatcher at times when the Company required them to work a job they regularly held prior to becoming an extra Train Dispatcher, when they could (during this period) be working extra as a Train Dispatcher. The Rule is a compensation protection Rule. It

does not make any work (performed during periods when Train Dispatcher compensation and benefits are being protected by that Rule) subject to the Scope Rule of the ATDA Agreement.

The Organization, as petitioner in this matter, has the burden of demonstrating that the claim filed before the Board is supported by the Rules of its Agreement. It has argued that the "provisions of Rule 5 are controlling" in this matter. It has only cited one section and paragraph of Rule 5 in its Submission to this Board - Section 2(c). Section 2(c) patently does not support its position in this matter. The claim is not supported by the Agreement provisions cited. It must therefore be denied.

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 23rd day of November 1998.