

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 34063  
Docket No. CL-34812  
00-3-98-3-443

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

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(National Railroad Passenger Corporation (AMTRAK)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-12072) that:

**Claim No. 1**

This claim is filed on behalf of Mr. Brian Crowe, Block Operator/Train Director, Boston, Massachusetts. Claim is for eight (8) hours at the rate of 15.84 per hour for each of the following dates: September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 1996.

Carrier violated the Agreement when it refused to hire this qualified Block Operator/Train Director to Train Dispatcher position, but instead elected to hire from outside the Corporation.

The rules violated are 1-B-1, 3-F-1, and Appendix O and Side Letter #12 of the Agreement in their entirety.

Claim is valid and must be paid.

**Claim No. 2**

This claim is filed on behalf of Mr. David Devine, Block Operator/Train Director, Boston, Massachusetts. Claim is for eight (8) hours at the rate of 15.84 per hour for each of the following dates: September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 1996.

**Carrier violated the Agreement when it refused to hire this qualified Block Operator/Train Director to Train Dispatcher position, but instead elected to hire from outside the Corporation.**

**The rules violated are 1-B-1, 3-F-1 and Appendix O and Side Letter #12 of the Agreement in their entirety.**

**Claim is valid and must be paid.”**

**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 Organization claims that the Carrier violated Rules 1-B-1, 3-F-1, Appendix O and Side Letter No. 12 of the Agreement when it elected to hire outside candidates for Train Dispatcher positions rather than hiring the Claimants Brian Crowe and David Devine, both Block Operators/Train Directors, Boston, Massachusetts. The Claimants had applied for training as Train Dispatchers, but were advised in February 1996 that they were not accepted as trainees. The claims were denied by letter dated November 26, 1996.**

**It is the position of the Organization that the Carrier violated the Agreement when it refused to hire the Claimants who were qualified Block Operators/Train Directors to Train Dispatcher positions. The Organization asserts that Letter No. 12 dated November 21, 1986 makes clear that TCU Division employees have a preferential hiring right, after ADTA contract provisions have been exhausted, over “other Amtrak employees.” Further, it cites the applicability of the following Rule:**

**“RULE 1-B-1 - QUALIFICATIONS FOR BULLETINED POSITIONS  
OR VACANCIES**

(a) Employees covered by these rules shall be in line for promotion. Promotion, assignment, and displacement shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

**NOTE:** The word “sufficient” is intended to more clearly establish the right of the senior employee to the position or vacancy where two or more employees have adequate fitness and ability.”

The Carrier’s position is that the TCU Organization has no official standing in the process of Train Dispatcher candidate selection. The Carrier asserts in a letter dated September 25, 1997, by the Director-Labor Relations, that it is Amtrak’s managerial function and prerogative to determine whether or not an employee meets the criteria to be selected for a Train Dispatcher Trainee. Additionally, the Carrier asserts that the Scope Rule of the Agreement between the parties does not include Train Dispatchers. Key to the Carrier’s position is its assertion that there are no provisions in the parties’ Agreements that would prevent the Carrier from going outside to hire individuals for Train Dispatcher positions.

The Organization relies on the Carrier’s denial of Letter No. 12 and Article IV, Paragraph A to support its position. In pertinent part they read:

**“LETTER NO. 12 - NOVEMBER 12, 1986**

It was agreed that such employees will be granted preferential hiring rights over other Amtrak employees to Train Dispatcher positions involved in the MBTA “North Side” commuter service after all Agreement provisions with the ATDA have been exhausted.

**ARTICLE IV, PARAGRAPH A**

- A. Employees who have TC NEC seniority excluding those who are selected for separation in accordance with Article I, paragraph C, will be granted preferential hiring rights to Train Dispatcher**

positions on the Northeast Corridor. Acceptable candidates will be selected in their TC NEC Seniority order.”

While Letter No. 12 gives preference to hiring employees it does not state that the Carrier relinquishes its right to hire qualified candidates outside of Amtrak. Although the Organization asserts that the language in Article IV, Paragraph A, gives a TCU employee a right to be selected as a Train Dispatcher Trainee, neither it, nor Letter No. 12 are sufficient to refute the fact that historically the Carrier retains the right to establish qualification criteria so long as they are not unreasonable or arbitrary. There is no evidence on the record to support the Organization’s position that the Carrier violated the Agreement. Accordingly both of the instant claims, are 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 25th day of May, 2000.**