

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34155
Docket No. MS-33886
00-3-97-3-402**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(David A. Dietz

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad
(Corporation (NIRC/METRA)

STATEMENT OF CLAIM:

“The dispute arises from the application of the June 29, 1995 Letter of Understanding between NIRC/METRA and the American Train Dispatcher’s Department - Brotherhood of Locomotive Engineers (ATDD-BLE), that detailed the manner in which the Carrier would establish and staff new Train Dispatcher’s positions at its Consolidated Control Facility (CCF). In brief, it stated that the Carrier would qualify twelve (12) candidates as Train Dispatcher’s, the earliest date of service by a candidate as a qualified Train Dispatcher would establish a common seniority date for all candidates, who would then be placed at the bottom of the current working Train Dispatcher’s seniority roster. They would be ranked among themselves based on their NIRC/METRA vacation qualifying date.

Though I was not one of the first 12 candidates selected for training, having taken the place of a candidate who chose to withdraw, I was one of the first 12 candidates qualified as a Train Dispatcher. It is my position that the June 29, 1995 Letter applies to my situation. The Carrier’s position is that, since I was not one of the first 12 candidates selected the letter does not apply to me. I was given a seniority date corresponding with my first day of service as a Train Dispatcher and places at the bottom of the roster.

The question I desire to put for Award before the Third Division of the National Railroad Adjustment Board is to determine the correct application of the June 29, 1995 Letter between NIRC/METRA and

ATDD/BLE as it pertains to my establishment of seniority as a Train Dispatcher on NIRC/METRA.”

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 claim at bar alleges failure to properly apply the June 29, 1995 Letter of Understanding with regard to the Claimant's seniority date. On May 8, 1995, the Carrier bulletined for 12 Train Dispatcher Trainees to work the Consolidated Control Facility. All 12 positions were selected in May 1995. Shortly thereafter, the parties negotiated a June 29, 1995 Letter of Understanding to provide each of the 12 candidates identical Train Dispatcher's seniority dates. Subsequently, two of the original 12 candidates left their positions prior to qualifying and thereby created vacancies. The Claimant filled one of the vacancies in January 1996. The qualified Dispatcher worked first on August 27, 1995 and all 12 were given that same identical seniority date. The Claimant was not given that date, but the date of May 13, 1996.

The Claimant filed the instant grievance alleging that he should have been given the seniority date of August 27, 1995 as required by the June 29, 1995 Letter of Understanding. The Claimant noted that he was originally given the proper seniority date when the January Seniority Roster was issued. However, that roster was protested by the General Chairman as inaccurate and afterwards his seniority date was altered to reflect the application of Article 8, "Seniority" establishing his seniority in violation of the June 29, 1995 Letter of Understanding.

The Claimant's position is that the Letter of Understanding is applicable to the first 12 candidates qualified as Train Dispatchers. In fact, the Claimant was the tenth candidate to qualify and perform service as a Train Dispatcher. He argues that although he was one of the first 12; began training at the same time as some of the original selected 12; and even worked as a Train Dispatcher before they did, he was given a lower seniority ranking. The Claimant argues that he "was a member of the original pool of applicants from the May 1995 job posting for Train dispatcher Trainees." Although he was not one of the first 12 selected, he was a replacement and in his understanding was to be given the common seniority date under the Letter of Understanding. The Claimant argues that the Agreement has been violated.

The Board reviewed the Letter of Understanding and in particular the Claimant's argument that it applies to his seniority. We note in this record, that whatever dispute over the application of the language there may be, the facts are the dispute is not between the signatories to the Understanding. It was the General Chairman who found the Claimant's seniority to be wrongfully issued by the Carrier. It was the Carrier who upon review of the Understanding acknowledged the error in proper application and issued the new seniority roster. While the dispute was on the property, the Carrier responded to the Claimant stating that the Letter of Understanding "only covers the 12 employees originally selected as candidate dispatchers."

The June 29, 1995 Letter of Understanding was entered into between the parties who later made the seniority roster decision. Our review of the Claimant's position is that it raises an application of the Agreement language to a situation which was not explicitly addressed in the Letter of Understanding. The Board has now been asked to interpret the applicability of the Understanding to the facts at bar. However, the very parties that negotiated the Understanding have given their interpretation to its language. The same parties who signed the Agreement, provided their interpretation on the property that it applied only to the original 12 Dispatcher Trainees who had been selected prior to the development of the Understanding and not to those who later filled vacancies when some of the original 12 withdrew from the training program. Those who negotiated the language of the Understanding find that it does not apply to the Claimant.

The on-property correspondence between the General Chairman's seniority protest and the Carrier's denial of claim indicate clearly that they mutually agree upon the meaning of their Letter of Understanding. As such, the Board has no alternative but to accept their interpretation and reject the claim.

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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 June, 2000.