

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37541
Docket No. TD-37686
05-3-03-3-36

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

(American Train Dispatchers Association

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

“Carrier File 06010109

The Burlington Northern Santa Fe Railroad Company (hereinafter referred to as “the Carrier”) violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as “the Organization”), including by not limited to Letter of Agreement Dated May 31, 1973, in particular, when on October 13, 2001, the Carrier allowed and/or required train dispatcher E. W. Gilmore to protect position 2nd Galveston (DS-23) and provided compensation at the overtime rate of pay, rather than allowing train dispatcher G. L. McDaniel, the senior qualified train dispatcher available under the Hours of Service Law, to protect the aforementioned position at the overtime rate of pay.

Carrier File 06020012

The Burlington Northern Santa Fe Railroad Company (hereinafter referred to as “the Carrier”) violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as “the Organization”), Article 12(a), Letter of Agreement Dated May 31, 1973 and Memorandum of Agreement dated March 5, 1974, Item 2, in particular, when on September 29, 2001, the Carrier allowed and/or required a junior train dispatcher to protect the position of 2d Trick

East End and provided compensation at the overtime rate of pay, rather than allowing train dispatcher C. L. Horton, the senior qualified train dispatcher available under the Hours of Service Law, to protect the aforementioned position at the overtime rate of pay."

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 facts in the claims are similar. On the dates in dispute, the Carrier used Dispatchers junior to the Claimants to fill vacant positions because, although the Claimants were rested and senior for the vacancies, had the Claimants been called, they would not have been available under the Hours of Service Act to protect their regular assignments.

The Organization relies upon the May 31, 1973 Letter of Understanding in arguing that the Claimants - by virtue of their seniority and the fact that they were rested for the vacancies - were available and therefore entitled to the overtime calls:

"... [W]hen there is no extra train dispatcher available who has not performed five days' dispatching service within seven consecutive days, dispatchers will be called for service in the following order:

1. The regular incumbent of the position.
2. The senior regular qualified train dispatcher available under the 'Hours of Service Law.'

3. The senior qualified extra train dispatcher available under the 'Hours of Service Law.'"

The same dispute was addressed in Third Division Award 36224 between the parties. After reviewing the history leading up to the adoption of the above language, the Board concluded:

"The Organization failed to prove that the 1973 LOU requires the Carrier to offer an overtime assignment in another position when such assignment would prohibit the employee, under the Hours of Service Law, from meeting the obligations of his regular assignment."

The premise of the Organization's position in this case is that Third Division Award 36244 is palpably in error and should not be followed. Giving the Organization the benefit of the doubt, at best, the conclusion of that Award is debatable. But, for purposes of stability and to prevent the parties from Referee shopping after they receive an Award which they believe was erroneously decided, a debatable conclusion is not sufficient reason to ignore a prior Award between the parties. To find otherwise would be an invitation to chaos. Third Division Award 36244 is not palpably in error. That Award therefore governs this dispute and dictates that the claims 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 20th day of July 2005.