

Award No. 18312
Docket No. TD-18653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier"), violated the effective schedule agreement between the parties, Article IX thereof in particular, by its action, effective January 9, 1969, following hearing held on January 2, 1969, in disqualifying Claimant L. E. Perry from service as Assistant Chief Train Dispatcher in its Tampa and Mulberry, Florida train dispatcher offices.

(b) Carrier shall now be required to rescind the action referred to in paragraph (a), clear Claimant Perry's record with respect thereto, compensate him for time lost attending hearing, and to further compensate him in amount representing the difference between rate of compensation applicable to Assistant Chief Train Dispatcher and that applicable to trick train dispatcher from January 9, 1969, until the date the Carrier's action is rescinded and Claimant Perry's record is cleared.

(c) Carrier shall further be required to compute and pay to Claimant Perry, from January 9, 1969, until date its action is rescinded and record cleared, interest on compensation computed in accordance with Paragraph (b) at the maximum legal rate provided for by the statutes of the state of Florida.

OPINION OF BOARD: The record shows that on December 27, 1968, the Carrier's Superintendent addressed the following notice to the Claimant:

"Please report to office of Trainmaster W. O. Brinson, Division Office Building, Tampa, 9:00 A.M., Thursday, January 2, 1969, for formal investigation to develop the facts and to determine your responsibility, if any, for alleged failure to comply with instructions of Chief Dispatcher M. R. Herring, dated Tampa, Florida, December 21, 1968, reading:

'2/109 tonight should be given rest at Uceta and then turned back called via Buckles, if any work to do at that point, and do all work at Kissimmee.'

"At this investigation, your past record will be reviewed.

"If you desire witnesses and/or representatives, you should so arrange." (Emphasis theirs.)

The Claimant contends that he received the quoted notice upon reporting for work on his regular assignment at 4:00 P. M., December 31, 1968.

At the beginning of the investigation at 9:00 A. M. on January 2, 1969, the Office Chairman objected to the notice as being nonspecific, vague and general in nature; and also contended that the time between time of receipt of the notice and the time of the investigation afforded the Claimant little or no time to prepare his defense. The Claimant also contended that the notice was improper; that insufficient time had been allowed to prepare an adequate defense, and that he desired out-of-town representation, which he had been unable to arrange in the time between receipt of notice and the time of the investigation. He specifically requested postponement or recess of the investigation until such time as he could make arrangements for out-of-town representation and prepare an adequate defense. His request was denied.

Without passing upon other aspects of the case, the action of the Carrier in refusing to recess the investigation, as requested by the Claimant, under the circumstances here involved, was, in the opinion of the Board, arbitrary and deprived the Claimant of a proper investigation to which he was entitled under Article IX of the Agreement. For this reason parts (a) and (b) of the claim will be sustained; part (c) will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Parts (a) and (b) of claim sustained; part (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1970.

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NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****Interpretation No. 1 to Award No. 18312****Docket No. TD-18653**

Name of Organization:**AMERICAN TRAIN DISPATCHERS ASSOCIATION****Name of Carrier:****SEABOARD COAST LINE RAILROAD COMPANY**

Upon application of the Carrier involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The claim of the Petitioner, which was sustained in Award 18312, requested the following remedial action:

"(b) Carrier shall now be required to rescind the action referred to in paragraph (a), clear Claimant Perry's record with respect thereto, compensate him for time lost attending hearing, and to further compensate him in amount representing the difference between rate of compensation applicable to Assistant Chief Train Dispatcher and that applicable to trick train dispatcher from January 9, 1969, until the date the Carrier's action is rescinded and Claimant Perry's record is cleared."

The commonly accepted meaning of the word "rescind" and which the Board recognizes as controlling herein, is to abrogate, annul or cancel. By the Carrier being required to rescind its action in disqualifying Claimant L. E. Perry from service as Assistant Chief Train Dispatcher in its Tampa and Mulberry, Florida train dispatcher offices, meant that Claimant was to be placed in the same relative position, so far as possible, as he occupied prior to disqualification by the Carrier, which disqualification was found to be in violation of the Agreement.

For the Petitioner to contend, after Award 18312 was rendered, that it did not request that Claimant be returned to the position of Assistant Chief Dispatcher, but only that the disqualification be rescinded, and that restoration of Claimant Perry to the service as Assistant Chief Dispatcher with his former seniority violated other provisions of the Agreement, is to engage in sophism, double talk, and fiddle-faddle, to which the Board does not subscribe nor will it become a party to.

With Parts (a) and (b) of the claim sustained in Award 18312, it was proper for the Carrier to restore Claimant to the service as Assistant Chief Train Dispatcher, with his former seniority, and the action of the Carrier was in strict compliance with the Award and accompanying Order of the Board.

Referee Arthur W. Devine, who sat with the Division, as a member, when Award No. 18312 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1971.