

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20476
Docket Number TD-20458

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Louisville and Nashville Railroad Company

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

(a) The Louisville & Nashville Railroad (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, Article V(b) 1 thereof in particular, when it refused to permit Claimant regularly assigned Night Chief Train Dispatcher N. Stamper to temporarily transfer to a temporary vacancy on the third trick train dispatcher position in Carrier's Latonia, Kentucky train dispatching office June 23 through June 27, 1972, inclusive.

(b) Because of said violation, the Carrier shall now be required to compensate Claimant N. Stamper one (1) day's compensation at the pro-rata rate of pay applicable to train dispatchers for June 23, 24, 25, 26 and 27, 1972, respectively.

OPINION OF BOARD: On June 23, 1972, an employee in Carrier's Latonia, Kentucky dispatching office was relieved for one week for vacation.

Claimant requested, on June 21, 1972:

"Please allow me to advance to J. D. Cummins vacancy 3rd trick dispatcher Latonia beginning Friday, June 23rd."

Carrier did not allow Claimant to advance to the position as requested.

Article V(b) (1) provides:

"(b) Temporary Vacancies:

1. Temporary vacancies resulting from sickness, leave of absence for six (6) months or less, vacations, etc., will not be bulletined. Regularly assigned train dispatchers in the seniority district will be permitted to temporarily transfer to such temporary vacancies, or to positions made temporarily vacant by such transfers, in accordance with their respective seniority."

The record contains arguments concerning availability of qualified employees and Carrier's responsibilities in that regard. The Board concludes that it is not necessary to explore those contentions. It is clear that Claimant had a right to transfer temporarily, and that no one senior to him pre-empted his request. Article V(b) (1) is mandatory in its terms and thus, Carrier violated the Agreement when it refused Claimant's request.

The claim for compensation for the breach, however, is less clear. Claimant seeks one (1) day's compensation at the pro-rata rate of pay for the five (5) days in question. Carrier points out that the Claimant worked at his regular assignment during the time, and that he earned a higher rate than he would have if he had transferred.

We have fully reviewed all of the cases cited by the parties concerning the question of damages, and have again noted the sharp divergence of view when Claimants have not suffered a monetary loss. This Referee has noted, in a number of prior Awards, that full employment is not a deterrent to an award of damages, certainly in a Scope Rule violation, because of a loss of work opportunity, as long as the claim is not speculative. The issue before us, however, is not as clear, and suggests that reasonable minds might differ in reaching a determination.

In addition to reliance upon Awards 5685 and 15614, Claimant has invited our attention to two recent Awards of this Division. Award 20311 rejected a result (concerning a similar damage issue) which would merely reprimand Carrier, and amount to a condonation of the violation. Rather, it required compensation as reparation for a breach. Conceding that the measure of damages was a difficult question in this type of case, the Board in Award 20311, concluded that a claim similar to the one in this Docket, be sustained. See also, Award 20228.

We do agree that no hard and fast rule can be dictated; but that each case must be considered on its own merits. Our review of the record convinces us that if the Carrier had properly applied Article V(b) (1), certain monetary payments would have resulted in order to provide proper coverage. Thus, a sustaining award cannot be considered as speculative, or unrelated to the breach.

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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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.