NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20567
THIRD DIVISION Docket Number TD-20511

William M. Edgett, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Burlington Northern, Inc.

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

(a) The Burlington Northern, Inc. (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the parties, Article 3(e) and Article 3(f) thereof in particular, when it "blanked" the position of Assistant Chief Train Dispatcher between 8:01 a.m. and 4:01 p.m. on February 8 and February 11, 1972 respectively in its Vancouver, Washington train dispatching office, and combined the duties and responsibilities of that position with those of the Excepted Chief Train Dispatcher.

(b) Because of said violations, the Carrier shall now be required to compensate Claimant Train Dispatcher E. S. Weyand one (1) day's pay for February 8, 1972, and Claimant Train Dispatcher L. A. Darnall one (1) day's pay for February 11, 1972 at time and one-half the rate applicable to Assistant Chief Train Dispatchers on said dates.

OPINION ON BOARD: The Chief Dispatcher at Carrier's Vancouver, Washington train dispatching office was absent on the dates of claim. His position was filled on those dates by the First Trick Assistant Chief Dispatcher (ACD). The ACD's position was not filled.

The Organization alleges a violation of the following Rules:

ARTICLE 3

. . .

(e) RELIEF SERVICE.

. . .

Relief requirements of less than four (4) days per week not subject to bulletin shall be considered extra work. Train dispatchers performing such work shall be paid the daily rate of the position worked.

(f) COMBINING TERRITORY, DUTIES OR RESPONSIBILITIES FOR RELIEF.

The combining of territory, duties or responsibilities, or the blanking of positions to avoid using

relief or extra train dispatchers to provide relief on rest days for established positions, will not be permitted except by agreement between the Superintendent and Office Chairman subject to approval of the General Chairman.

Article 3, Section (e) has no application in this claim. The Organization has referred to it in an apparent effort to show that a position may not be blanked. Whether that is the case or not depends, not on an inference drawn from (e), but on a specific provision, Article 3(f), which covers the fact situation here.

Article 3(f) provides two separate prohibitions. Carrier may not:

1) Combine territory, duties or responsibility, or

2) blank positions to avoid using relief dispatchers to provide relief on rest days for established positions.

The record shows, without contradiction, that the Chief Dispatcher (CD) was not on a rest day on the dates of claim. The second prohibition, therefore, does not apply.

The main argument centers on the assertion that what took place was a combining of duties and responsibilities. The Organization has made no attempt to offer evidence on this point. Instead it has relied on what it considers a necessary inference.

The position of ACD was established to assist the CD, and the Organization says he does so by performing some of the duties which the CD would otherwise perform. From this the Organization reasons that it would be impossible to show that work of the ACD position was not performed on the dates of claim. Carrier has uniformly stated that no work of the ACD position was performed and that therefore there was no "combining of territory, duties or responsibilities."

The Organization's burden of proving a state of facts contrary to that which Carrier asserts is not removed because of its asserted difficulty. As the record stands Carrier's statement that no work of the ACD position was performed was uncontroverted on the property and must be accepted as a proven fact. There was no "combining of territory, duties or responsibility", nor was there a "blanking of positions to avoid using relief or extra train dispatchers to provide relief on rest days."

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.