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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22206
Docket Number TD-22276

Don Hamilton, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Norfolk and Western Railway Company

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

CLAIM #1

(a) The Norfolk and Western Railway Company (VIRGINIAN) (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, including Articles 3(a), 4(h) and 5(c) thereof, when it failed to call Claimant senior available extra train dispatcher K. D. Mills for service on the first trick train dispatchers position in the Princeton, West Virginia office on December 25, 1974.

(b) Because of said violation, the Carrier shall now compensate Claimant K. D. Mills one day's compensation at the pro-rata rate applicable to trick train dispatchers for December 25, 1974.

CLAIM #2

(a) The Norfolk and Western Railway Company (VIRGINIAN) (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, including Articles 3(a), 5(c) and (7(a) thereof, when it did not permit Claimant regularly assigned train dispatcher J. M. Sparks to perform service on the second trick train dispatchers position in the Princeton, West Virginia office on December 25, 1974.

(b) Because of said violation, the Carrier shall now compensate Claimant J. M. Sparks one day's compensation at the pro-rata rate applicable to trick train dispatchers for December 25, 1974.

CLAIM #3

(a) The Norfolk and Western Railway Company (VIRGINIAN) (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, including Articles 3(a), 4(h) and 5(c) thereof, when it failed to call Claimant senior available extra train dispatcher K. B. Coleman for service on the third trick train dispatchers position in the Princeton, West Virginia office on December 26, 1974.

(b) Because of said violation, the Carrier shall now compensate Claimant K. B. Coleman one day's compensation at the pro-rata rate applicable to third trick train dispatchers for December 26, 1974.

OPINION OF BOARD: Claim No. 1 is presented on behalf of K. D. Mills. The incumbent of the First Trick Train Dispatcher position was absent due to illness. Mills had been filling the vacancy and was notified that he would not be used on December 25, 1974, as the position would not be filled. He claims pro rata compensation for one day at the rate applicable to Trick Train Dispatchers.

Claim No. 2 is presented on behalf of J. M. Sparks. He was the incumbent of the Second Trick Train Dispatcher position and was notified that his position would not be filled December 25, 1974.

Claim No. 3 is presented on behalf of K. B. Coleman. The incumbent of the Third Trick Train Dispatcher position was absent on vacation December 26, 1974. The Carrier did not fill his vacancy on that date. Coleman was the senior qualified Extra Train Dispatcher standing for call to fill the vacancy.

The Carrier first alleges that these claims are not properly before the Board. It is asserted that the claims were not "handled in the usual manner" on the property. It is alleged that the Petitioner contacted the Carrier on June 18, 1976, advising the Carrier of the decisions in Awards No. 1, 2 and 3 of Public Law Board No. 1594. It is asserted that after reviewing these awards, the Carrier offered to settle these claims by allowing Claim No. 2 and denying Claims No. 1 and 3.

The Carrier asserts that the Petitioner did not respond to this proposition but instead, after several months, presented the dispute to the Board. There is no question concerning the timely filing of claims with the Board. It is simply a matter of good faith exhaustion of the possibility of agreement on the property.

The basic issue involved in this dispute is the right of the Carrier to blank a Train Dispatcher position on a given day. The Petitioner asserts that there is no rule in the Agreement which permits such action. The Carrier argues that there is no rule in the Agreement which prohibits such action. Therefore, the compromise suggested by the Carrier would not have resolved the basic question which gave rise to the disputes and, therefore, the argument that the Petitioner failed to negotiate in good faith is not well founded.

The Carrier differentiates Claimants 1 and 3 from Claimant 2 on the basis that the former are not regularly assigned Train Dispatchers but are extra men on call when needed. The Carrier urges that these Claimants are not monthly rated employees but are paid a portion of the monthly rate of the Train Dispatcher for each day they actually work as a Train Dispatcher.

The Carrier cites Award 10705 and urges the adoption of the theory expressed therein, that if the Organization wants a monthly guarantee for extra Train Dispatchers they should negotiate amendments to the rules Agreement and not expect this Board to accomplish that for them.

The Organization relies upon Awards No. 1, 2 and 3 of Public Law Board No. 1594.

Award No. 1, Neutral Member Lieberman, while sustaining the claim, concluded his Award with the language, "Contrary to the practices and written provisions in other non-operating agreements, Carrier does not have the right to unilaterally blank positions on holidays for train dispatchers: this is the only conclusion we can reach."

In Award No. 1 of Public Law Board No. 1594, the Claimant was the Senior Available Extra Train Dispatcher who alleged he should have been called for service on the First Trick Eastern Dispatching District in the Florence, South Carolina office December 25, 1974.

In Award No. 2, the Claimant was the regularly assigned Relief Train Dispatcher on the Third Trick Position on the East End December 25, 1974.

In Award No. 3, the Claimant was the regularly assigned Train Dispatcher on the Third Trick West End December 25, 1974.

The Carrier dissented to these Awards, advancing the arguments (1) that the Awards are based upon an alleged practice despite the admitted absence of a governing rule; (2) that the awards improperly transmute a monthly rate into a monthly guarantee, and (3) the awards fail to recognize the distinction between combining of positions for relief purposes and blanking of positions.

Although it is possible that having heard the same or similar arguments this Board would, at a prior time, have reached a different conclusion than that reached by the members of Public Law Board No. 1594,

there is a great deal of merit in following the established precedent in these cases. The claims now before the Board and the claims presented to Public Law Board No. 1594 are almost identical. The main principles upon which the Awards rest are without distinction. The Public Law Board determined that the Carrier does not have the right to unilaterally blank positions on holidays for Train Dispatchers. The Carrier is now asking this Board to determine that the interpretation does not apply to Extra Train Dispatchers, but, in fact, the interpretation came about in cases which involved Extra Train Dispatchers. Therefore, we find no compelling reason to overrule Public Law Board No. 1594, nor do we find sufficient evidence of record to distinguish the cases before this Board and the cases which were decided by Public Law Board No. 1594, even though Claim 3 in the instant case involves a vacation day, and not a holiday.

It must be disquieting, both to labor and management, when neutrals vascillate on basic issues. Therefore, in the interest of perpetuating the legal precedents propounded by Public Law Board No. 1594, the claims herein will be sustained.

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

Claims 1, 2 and 3 are sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1978.