

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22375
Docket Number TD-22132

Joseph A. Sickles, Referee

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

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

CLAIM #1

(a) The Louisville & Nashville Railroad Company (hereinafter referred to as "the Carrier"), violated Article IV(d) of the effective schedule Agreement between the parties, when on January 7, 1976 it permitted Mr. D. B. Wagner to displace Claimant Train Dispatcher John Barr off his regular bid-in position (Third Trick SD-OD train dispatcher) per Carrier's letter of December 19, 1975.

(b) Because of said violation, the Carrier shall now compensate Claimant J. Barr eight (8) hours pay for each work day of his position from which he was improperly displaced, from January 7, 1976 until such time as the C&EI Sub-Division territory is physically added to the Henderson Sub-Division Dispatchers' territory.

CLAIM #2

(a) The Louisville & Nashville Railroad Company (hereinafter referred to as "the Carrier"), violated Article IV(d) of the effective schedule Agreement between the parties, when on January 8, 1976 it permitted Train Dispatcher J. Mabrey to displace Claimant Warren Lewis off his regular bid-in position (Second Trick SD-OD train dispatcher) per Carrier's December 19, 1975 notice signed by Mr. Kelly Chief Dispatcher.

(b) Because of said violation, the Carrier shall now compensate Claimant Warren Lewis eight hours pay for each work day of his position from which he was improperly displaced from January 8, 1976 until such time as the C&EI Sub-Division territory is physically added to the Henderson Sub-Division Dispatchers territory.

OPINION OF BOARD: In 1969 this Carrier acquired a portion of the Chicago and Eastern Illinois Railroad. It was not until early-1976, however, that the dispatchers of the former road were moved from Danville, Illinois to the Carrier's Evansville, Indiana office.

Carrier issued a circular stating that on December 22, 1975, dispatchers holding Henderson Sub-Divisions positions could exercise seniority because of an alteration in responsibility. Two such incumbents exercised displacement rights in reliance upon that portion of Article IV(d)(4) which provides that a train dispatcher may exercise seniority rights when additional territory is added to an assignment or method of dispatching is first changed from train order to CTC, or vice versa, on a permanent basis. Those displacements adversely affected these Claimants which prompted this dispute.

Both parties seem to agree that the issue presented rests on the question of whether or not the December 22, 1975 change was of sufficient magnitude to warrant a seniority move. There is no question of a change to or from CTC and thus, the only question deals with "additional territory..added to...assignments..."

There have been certain contentions advanced by the Claimants that the displacing employees failed to act within the time frames mandated by the agreement, but we find it unnecessary to explore that assertion because our detailed review of the record fails to reveal to us that there was any "additional territory" added until late February, 1976.

Carrier contends that the change initiated by Carrier was sufficient to activate Rule IV(d) because responsibility of dispatching the CE&I territory (Danville) was added to the Evansville positions. Adding responsibility does not necessarily add territory. Had the parties intended that an increase in responsibility should activate Rule IV(d), they could have so stated. Their failure to do so renders us powerless to provide the relief sought by Carrier.

We have considered, at length, Carrier's assertion that we should not award damages. But, we feel that such an Award is appropriate under this record. It is recognized, however, that no damages are due after February 27, 1976.

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 to the extent stated in the Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1979.