

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23191
Docket Number TD-22874

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(The Atchison, Topeka and Santa Fe Railway Company

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

(a) The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the parties to this dispute when, on December 10 and December 11, 1977, it failed to provide relief for vacancy existing on Position No. 6511, Assistant Chief Dispatcher, Clovis, pursuant to the provisions of Article II, Section 10-b, as amended.

(b) The Carrier shall be required to compensate regularly assigned train dispatcher J. E. Young eight (8) hours pay at the time and one-half rate for December 10, 1977, and regularly assigned train dispatcher D. H. Williams eight (8) hours pay at the time and one-half rate for December 11, 1977. Both claimants are qualified according to Article II, Section 10-b-1 (5) as amended effective February 1, 1974.

OPINION OF BOARD: Assistant Chief Dispatcher Position 6511 was regularly assigned to work 10:00 a.m. to 6:00 p.m. with Mondays and Tuesdays as assigned rest days.

The regularly assigned incumbent (Cooper) observed vacation days and, according to the Organization, there were temporary vacancies on the position.

The Carrier did not designate anyone to fill Position 6511 on the dates in question.

Article II, Section 10-B-1 provides that temporary vacancies of less than 10 work days duration will be filled in accordance with certain contractually specified precedences.

In response to the initial claim, the Carrier stated that it found no basis under the Rules Agreement. When the matter was appealed, the Carrier advised that management has always had the right to "blank" positions if it so desires when the occupant of the position is "off for some reason." Further, the Carrier stated that in the instant claim, "... The work of Position No. 6511

"was not performed by anyone else, nor was any territory changed or added to other positions, i.e., the work of Position No. 6511 was not performed on claim dates."

In that correspondence, it cited a number of awards establishing a Carrier's right to blank positions.

In direct reply to that correspondence, the Organization pointed out:

"Your statement that the work of Position 6511 was not performed by anyone else, nor was any territory changed or added to other positions, i.e., the work of Position No. 6511 was not performed on claim dates is in error. The work was added to and assumed by the Chief Dispatcher until he was relieved by the Assistant Chief Dispatcher, who was then required to perform the work, in addition to all other assigned duties, until the end of the assigned hours of Position No. 6511 on the days claimed."

Although the Carrier corresponded with the Organization concerning this claim on two further occasions, the Carrier never disputed the factual assertion cited above.

To be sure, the Carrier has raised a number of factual assertions in its Submission to this Board and has, in that document, asserted that no one performed any work of the Assistant Chief Dispatcher, as the position was "blanked in its entirety." However, as has been frequently held by this Board, a party may not raise, for the first time, factual allegations in its Submission. Stated differently, in order to urge various factual matters to the Board, they must be raised and considered while the matter is under review on the property. The Carrier's failure to dispute the Employees' above-cited factual assertion while the matter was under review on the property precludes their attempt to do so in the Submission. Thus, we agree with the assertion of the Employees that this case does not properly present to us a question of the right to blank the positions.

At Page 10 of its Submission, the Carrier recognizes that pertinent agreement sections are significant if the Carrier elects to fill the position and, accordingly, we will sustain the claim.

Similarly, any question of the propriety of awarding damages is misplaced because that matter was not raised by the Carrier while the matter was under review on the property.

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: _____


Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.