

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23278  
Docket Number TD-23348

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(Seaboard Coast Line Railroad Company

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

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, Article I(a) and IV(e) thereof in particular, and Memorandum Agreement effective June 21, 1973, Third Order of Call thereof in particular, when it failed to use the senior, available, qualified train dispatcher to fill the vacancy on the Chief Dispatcher's position, Atlanta, Georgia, July 28, 29, 30, and 31, and August 1, 4, 5, 6, 7, 8, and 9, 1975, during the vacation absence of the one excepted incumbent, Mr. C. W. Caldwell.

(b) The Carrier shall now be required to compensate Claimant J. G. Sammons one day's pay at the then prevailing rate allowed assistant chief dispatchers for each date listed in paragraph (a) above.

OPINION OF BOARD: At issue is the proper interpretation of the provision in the Agreement between the parties, which provides that one chief dispatcher in each dispatching office is excepted from the rules of the Agreement.

The claimant contends that the only one affected by the exception is the person assigned to the position. The Carrier contends that the provision applies to the position which, in all respects, is excepted from the Agreement.

Specifically the claimant objects to the replacement of the designated chief dispatcher during a vacation period by another chief dispatcher from another city, ignoring the seniority provisions of the Agreement providing that in filling positions of train dispatchers covered by the Agreement, fitness and ability being sufficient, seniority should govern, as supported by the memorandum amplifying the system for applying the seniority provisions.

Under the claimant's interpretation, the Carrier may assign anyone to the position on a permanent basis but any replacement on a temporary basis is subject to the Agreement. Under the Carrier's interpretation, it may fill this position at any time, permanently or temporarily, by anyone irrespective of the Agreement.

We have reviewed the many awards cited by the parties and have concluded that although there is not complete unanimity, the prevailing view by far is that the exception applies only to the person assigned to the position and not to the position itself.

We have reviewed the correspondence referred by the Carrier wherein it refused to reduce to writing what the Organization claimed the current practice was and have concluded the correspondence does not in itself aid either party. Also, the failure of the Organization to prosecute an earlier charge cannot be controlling here.

Third Division Award 18070 involved the same parties, and it was held therein that the position was not excepted, only the incumbent (see also supporting Third Division Awards 18250, 18251 and 18390).

Carrier has attempted to distinguish many of the awards based upon the factual situation, but we are persuaded that the interpretation must be consistent. If the position is subject to the terms of the Agreement for purposes of pay to other than the incumbent, it is likewise subject to the terms of the Agreement in the application of the seniority provisions, except as to the appointment of the specified incumbent.

Question has been raised as to the specific application of the seniority provisions of the Agreement to other than the incumbent. The Agreement specifically includes the "chief" in the definition of train dispatcher, which should resolve this issue.

We, therefore, conclude that only the incumbent is excluded from the provisions of the Agreement and not the position.

We further find, however, that the claimant is not entitled to an award in this instance.

The seniority provision of the Agreement requires that fitness and ability must be sufficient. The claimant had once been a chief dispatcher and had been demoted for cause and does not have a right to fill the position.

Some awards have held that the claimant does not have to be next in line in order to process a valid claim. We find, however, that this principle cannot apply to someone who is not qualified to fill the position and, therefore, Part (b) of the claim is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The Agreement was violated but not as to the claimant.

A W A R D

Claim disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1981.