

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23967
Docket Number TD-23224

George E. Larney, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Indiana Harbor Belt Railroad Company

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

(a) The Indiana Harbor Belt Railroad Company (hereinafter referred to as "the Carrier") violated the current Agreement (effective April 28, 1932 with amendments to December 1, 1954) between the parties, Article 4 thereof in particular, when the Carrier would not allow train dispatcher D. A. Douglas (hereinafter referred to as "the Claimant") to resume work as yard helper upon reverting to the train dispatcher extra list as provided in Article 4(e) to thereafter perform service as an extra train dispatcher in accordance with Article 4(h) and when the Carrier refused to compensate the Claimant the amount he would have earned as yard helper if the Claimant had been allowed to revert to the train dispatchers' extra list and to perform service as a yard helper when not required to perform service as an extra train dispatcher.

(b) The Carrier shall now be required to compensate the Claimant the amount he would have earned as a yard helper from February 10, 1977 to April 4, 1977 inclusive, in addition to compensation earned as a train dispatcher.

OPINION OF BOARD: Claimant, David A. Douglas, a Train Dispatcher at Carrier's Gibson District was displaced by a senior train dispatcher employe on or before February 1, 1977. Though there were two (2) regularly assigned train dispatchers junior to Claimant at the time, the Claimant nevertheless vocally declared his intention to revert to the Train Dispatcher's Extra List with the further intention of exercising his seniority as a yardman on those days he went unassigned as a train dispatcher. The record evidence reflects Claimant's seniority date was May 14, 1970, and as of January 1, 1977, he was number 204 on the Gibson Yardmen's seniority roster of 302 Yardmen.

The Organization submits the Supervisor of Train Operations who is the chief train dispatcher, overheard the Claimant's comments relative to opting to revert to the extra list and advised the Claimant he would not be allowed to exercise seniority as a yard helper in the Gibson District. Advised of this prohibition and not desirous of being without work, Claimant, under protest, displaced one of the junior train dispatchers effective February 2, 1977, and accordingly assumed position No. 956. On March 18, 1977, the Claimant bid on Train Dispatcher position No. 957 which he was subsequently awarded on April 4, 1977. The Organization alleges Claimant was wrongfully prevented from reverting to the Extra List between the claim dates of February 10 and April 4, 1977, and that in so doing, Carrier violated Article 4, Section (e) of the Controlling Agreement effective April 28, 1932

with Amendments to December 1, 1954. Article 4, Section (e) reads in full as follows:

"(e) Exercise of Seniority

A train dispatcher may exercise displacement rights to any position covered by these rules in the following instances:

1. When he is displaced by a senior train dispatcher or his position is abolished.
2. When there is a material change in the working conditions or more than one hour in the starting time of any position.

A train dispatcher desiring to exercise his rights under items 1 or 2 above shall do so in writing within ten days, unless prevented by sickness or proper leave of absence, in which event he must do so within ten days after his return. Failure to comply with the time-limit herein prescribed shall cause him to revert to the extra list and he may thereafter exercise seniority in accordance with these rules.

A train dispatcher whose position has been claimed by a senior train dispatcher in accordance with these rules may hold the position until the displacing dispatcher actually takes it.

If a train dispatcher covered by this agreement loses his position for reasons other than those shown in Item 1 above, the superintendent and office chairman shall jointly consider the case and give him such displacement rights to a dispatcher's position as the circumstances justify."

The Organization notes specifically that Section (e) of Article 4 does not specify that a train dispatcher must exercise seniority to obtain a train dispatcher position but rather merely specifies a train dispatcher may so exercise such seniority. Carrier, argues the Organization, deprived Claimant of his right to revert to the extra list and therefore the Board must honor the instant claim.

Carrier submits the thrust of the instant claim is cast in the realm of "what ifs", as Claimant did, in fact, replace a less senior train dispatcher, albeit under protest, and never did revert to going on the extra list. Therefore, the Organization's principal allegation Carrier violated Article 4, Section (e) by barring Claimant from going on the extra list in the first instance and thereafter preventing him from exercising his yardman's seniority in the second instance,

cannot be tested or determined by the Board because of Claimant having exercised his seniority to displace. Accordingly, Carrier argues, the instant claim should be denied.

Based on a thorough review of all the record evidence, the Board finds it must concur in Carrier's position that the case at bar cannot be determined because the claim is predicated on circumstances other than those which prevailed. If, as it is so alleged, Carrier did coerce Claimant into exercising his seniority to displace into Train Dispatcher Position No. 956, then we proclaim Carrier ought to be admonished. However, even though Claimant displaced under protest, the evidence presented before us is not of sufficient weight to support the allegation Carrier coerced Claimant from reverting to the Extra List. Given this paucity of evidence in conjunction with our other reasons, we find we must dismiss the instant claim.

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

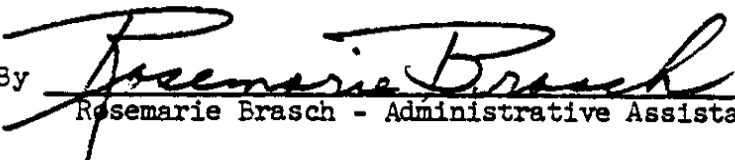
That no violation has been proven.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of August 1982.