

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25486
Docket Number TD-25393

M. David Vaughn, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Consolidated Rail Corporation

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

(a) The Consolidated Rail Corporation (hereinafter referred to as "the Carrier") violated the effective Agreement between the parties, Rule 1 - Scope, thereof in particular, when the carrier ordered Conductor Pilot for Symbol Freight EDOI-7 at Morrisville on May 7, 1982.

(b) For the above violation the Carrier shall compensate Claimant J. Polka (originally Assistant Chief Dispatcher I. J. Askin) one days compensation at the pro-rata rate applicable to Assistant Chief Dispatchers for May 7, 1982.

OPINION OF BOARD: On May 7, 1982, Carrier's Road Foreman of Engines and Supervisor of Train Operations at Morristown instructed a crew dispatcher to call for duty a Conductor Pilot for a freight train and later verified that the call had been made. The actions took approximately one minute. The Organization claimed that the actions of the Carrier's Supervisors violated the Scope Rule of the applicable Agreement, since it asserted that calling crew callers is part of the Dispatchers' responsibilities in connection with the movement of or supervision of the handling of trains.

The Organization asserted on behalf of a named Claimant entitlement to one day's pay as remedy for the alleged violation. That Claimant was apparently on duty receiving pay at the time of the incident and, apparently, lost no pay as a result thereof. After the Carrier so responded, the Organization amended the claim to change the identity of the Claimant.

The Parties were unsuccessful in resolving the claim on the property and it was brought before this Board.

The Scope Rule in question identifies the employees covered by the Rule by job titles. The Rule does include a note that:

"...the duties of the [listed] classes may not be performed by officers or other employees."

The Organization asserts that the identity of the Claimant is only incidental to the violation alleged and is of no concern to the Carrier. It argues that a change in the name of the Claimant during the progressing of the claim should not invalidate it. With respect to the merits of the claim, the Organization asserts that the work performed by the Supervisors belongs exclusively to the Dispatcher Craft and, under the Rule, cannot be performed by anyone outside the Rule.

The Carrier takes the position that substitution of the named Claimant during the course of handling the claim on the property means that the original claim was not progressed "in the usual manner" as required by the Railway Labor Act and that the Board is, therefore, without jurisdiction to hear it. It argues that if the claim of Polka is considered a new claim, it was untimely and improperly filed. With respects to the merits of the claim, the Carrier points out that there is no support in the Agreement or in the record for the proposition that the duties in question are exclusively reserved to the Dispatcher Craft.

The Parties cite Board precedent which stand for the propositions that, in some circumstances, substitution of Claimants invalidates the claim, and in some cases it does not. In this case, the Carrier has the better of the argument, for the record suggests that the substitution was not merely of one similarly situated Claimant for another, but, rather, that the substitution was made to replace a Claimant who may well have had no entitlement to the remedy even if a violation were found with a Claimant who might be so entitled. The Carrier responded to a claim with one set of facts at the Supervisor level and to a different set of facts at a higher level. Neither the legal requirements under which the Board operates nor sound labor relations procedure are served by allowing such an amendment.

The claim cannot, in any event, be sustained on the merits. Board precedent is clear that, in applying such Scope Rules, the Organization carries the burden of showing, through history and custom, that the work has belonged exclusively to the Craft. See, e.g., Third Division Awards 14507, and 21479. The record here is devoid of any such proof. The claim cannot, therefore, be sustained on its merits.

The claim must be, and it therefore is, dismissed and/or 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 Employes involved in this dispute are respectively Carrier and Employes 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 claim should be dismissed and/or denied.

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Claim dismissed and/or denied.

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By Order of Third Division

ATTEST:

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.