

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26037

Docket Number MS-26038

Charlotte Gold, Referee

PARTIES TO DISPUTE: (J. C. Spinelli
(Norfolk and Western Railway Company
(formerly Akron, Canton & Youngstown Railroad)

STATEMENT OF CLAIM:

"The Akron, Canton & Youngstown Railroad Company (N&W) (hereinafter referred to as the Carrier or AC&Y - N&W) violated its Train Dispatchers schedule working conditions agreement when on February 20th, 1981 it abolished Relief Dispatchers position. This is in Violation of Article (3) paragraph (d) which reads as follows

- Relief Service -

Where relief requirements regularly necessitate four (4) or more days relief service per week, relief dispatchers shall be employed and regularly assigned and compensated at the rate applicable to positions worked. When not engaged in dispatching service they shall be assigned to such other service as may be directed by the proper supervisor officer and shall be paid for such service at a rate commensurate with the service rendered."

OPINION OF BOARD: Petitioner alleges that Carrier violated Article 3(d) of the parties' Agreement when, on February 20, 1981, Carrier abolished a regularly assigned relief position. Article 3(d) reads as follows:

"RELIEF SERVICE

(d) Where relief requirements regularly necessitate four (4) or more days relief service per week, relief dispatchers shall be employed and regularly assigned and compensated at rate applicable to positions worked. When not engaged in dispatching service, they shall be assigned to such other service as may be directed by the proper supervisory officer and shall be paid for such service at a rate commensurate with the service rendered."

Petitioner maintains that there remained four or more days of relief requirements and points to the fact that the relief position was reestablished on July 10, 1984.

Carrier raised two of the same arguments in this case as it did in cases covered in Third Division Award Nos. 25959 and 25961: the Claim was not moved to the Adjustment Board expeditiously and Petitioner was not the proper

party to advance the Claim. As in Award No. 26036, we find here that the Claim was not abandoned and that Petitioner is Claimant himself and therefore has standing before this Board. In the instant dispute, it is noted that Claimant's name appears in the Statement of Fact rather than in the Statement of Claim in the Claim dated April 22, 1982. Despite this, Carrier was fully knowledgeable about Claimant's identity and consequently, we believe that this irregularity should not prevent a full Hearing of his Claim.

As to the merits of the case, we find basis to sustain the Claim. The fact that the position was rebulletined supports the contention that there were sufficient weekly requirements to necessitate the presence of a Relief person. As noted by Carrier, however, Claimant was unavailable to perform the work for which compensation was sought because he was otherwise engaged. Since he suffered no damage, a monetary Award is not appropriate.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the dispute 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

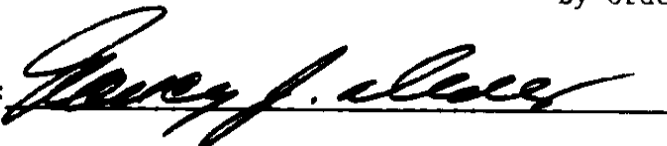
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1986.