

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26310
Docket Number TD-25657

John B. LaRocco, Referee

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

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

(a) The Consolidated Rail Corporation (hereinafter referred to as the 'Carrier' or 'Conrail') violated its Train Dispatchers' schedule working conditions (Agreement), including Rule 4, Section 1 thereof when it failed to bulletin, award and fill new positions of Assistant Chief Dispatcher effectively established on each shift in the Baltimore, Md. office on or about November 5, 1981.

(b) Because of said violation, the Carrier shall now compensate the senior extra Train Dispatcher in the Philadelphia District seniority district who is qualified as an Assistant Chief Dispatcher and available at the starting time of each of the respective Assistant Chief Dispatcher positions referred to in paragraph (a) above, one (1) day's pay at the rate applicable to Assistant Chief Dispatchers beginning November 5, 1981 and continuing on each shift and date thereafter until said positions, including a Relief position, are appropriately bulletined, awarded and filled in accordance with Rule 4, Section 1 of the Agreement.

(c) In the event no qualified extra Train Dispatchers are available at the starting time of any of the positions and on any of the dates referred to in paragraph (b) above, the claim is made on behalf of the senior regularly assigned Train Dispatcher in the Philadelphia District seniority district who is qualified as an Assistant Chief Train Dispatcher, at the time and one half rate.

(d) Eligible individual Claimants entitled to the compensation requested in paragraphs (b) and/or (c) above include, but are not limited to, J. Polka, J. Nock and R. Rulis, and their respective identities are readily ascertainable on a continuing basis from the Carrier's records and shall be determined by a joint check thereof."

OPINION OF BOARD: Prior to October 25, 1981, the four Dispatcher Assistants at the Carrier's Baltimore Office worked closely with Amtrak Chief and Assistant Chief Dispatchers under the authority of the Carrier's Philadelphia Train Dispatching Office. On that date, the Carrier rearranged train dispatching territories. As a result, the four Baltimore Dispatchers Assistants were assigned to instruct Potomac Yard personnel regarding the distribution of power and the classification of trains departing the yard. These duties were formerly performed by Assistant Chief Dispatchers at Philadelphia.

In Bulletin No. 43 dated November 25, 1981, the Carrier anticipated converting the four Dispatcher Assistant positions into Assistant Chief Dispatcher positions. However, the Carrier never reclassified the four jobs. Instead, when the Dispatcher Assistants performed work belonging to the Assistant Chief Dispatcher class, they were compensated at the higher pay rate under the Rule 1(b) Note. The Carrier explained that a local Officer inadvertently and incorrectly announced that the Dispatcher Assistants positions would be reclassified to a higher class. Despite the Carrier's explanation, the issue presented to this Board is whether, in fact and substance, the Dispatcher Assistant positions were effectively converted into Assistant Chief Dispatcher positions.

Rule 4, Section 1(h)3 provides that an existing regular position will be re-bulletined when ". . . the General Chairman and Manager-Labor Relations agree that the duties have been substantially changed." The record does not reflect any agreement concerning the four positions in question. On the contrary, after the territory rearrangement, the predominant work functions of the Dispatcher Assistants remained virtually the same as the duties which they performed prior to October 25, 1981. The Carrier merely added a modicum of Assistant Chief Dispatcher work to the Dispatcher Assistant positions. To a limited extent, the Note to Rule 1(b) permits the performance of work across class lines provided, the ". . . compensation of employees performing the work of two or more of the classes herein defined shall be that of the highest rated class of work which they perform." Thus, the Rule 1(b) Note is compatible with Rule 4, Section 1(h)3. The Organization has not satisfied its burden of showing that the duties of the Dispatcher Assistants substantially changed. Absent proof of a de facto reclassification, the Dispatcher Assistants were properly compensated in accord with the Rule 1(b) Note rendering it unnecessary to reclassify or re-bulletin their positions.

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 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1987.