

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Seaboard System Railroad

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

(a) The Carrier, Seaboard Coast Line Railroad Company, violated the effective Agreement between the Carrier and the American Train Dispatchers Association, Article V(b) as amended by Agreement of May 10, 1979 and the 'Order of Call Agreement' of June 21st, 1973 thereof in particular, when it allowed train dispatcher junior to Claimant J. G. Sammons to claim temporary vacancy of the excepted Chief Train Dispatcher C. W. Caldwell on September 11, 13, 14, 15, 16, and 17, 1982 and further allowed junior train dispatcher to Mr. Sammons to protect this temporary vacancy on September 18, 1982 when no qualified, extra train dispatcher was available thereby violating the Second order, of the above 'Order of Call Agreement'.

(b) For the above violation the Carrier shall now compensate Claimant Assistant Chief Dispatcher J. G. Sammons six (6) days' compensation at rate applicable to Assistant Chief Dispatchers position and one (1) day's compensation at rate of time and one half (overtime rate) applicable to Assistant Chief Dispatchers position."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was at the time of the incident that gave rise to this dispute employed as a Train Dispatcher and as Assistant Chief Dispatcher. On September 11, 13, 14, 15, 16, 17, and 18, 1982, Claimant attempted to hold down a temporary Chief Train Dispatcher position. He was denied the opportunity account of not being qualified. A less senior employe was allowed to cover the position. A claim was filed requesting a day's pay for the above-listed days. The claim was denied and has been progressed to this Board for resolution.

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Award No. 27139
Docket No. TD-25973
88-3-84-3-452

A review of the record reveals that Claimant once held a Chief Dispatcher's position and was disqualified for cause. It also reveals that Claimant has been the subject of two previous Third Division Awards (23278 and 23606) in which it was concluded he was not qualified to perform the duties of a Chief Dispatcher.

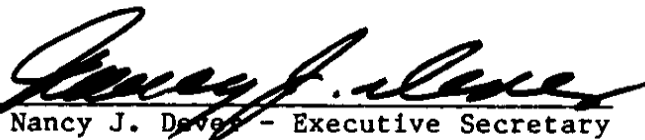
This Board, based on the record before it, can find no basis on which to decide otherwise.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.

LABOR MEMBER'S DISSENT
to
Award 27139 - Docket TD-25973
Referee Dennis

This was a "fitness and ability" dispute, arising from the Claimant's attempt to use his superior seniority to claim a temporary vacancy on the Chief Train Dispatcher's position in Atlanta, Georgia in September, 1982.

The Carrier's defense against the claim consisted solely of its assertion Claimant lacked the "fitness and ability" to perform the duties of the Chief Train Dispatcher's position. The only foundation for this defense was two Third Division Awards rendered in 1981 and 1982, determining that Claimant was not qualified on the subject position in 1975, because he had once been removed from the Chief Train Dispatcher's position (in 1970), such removal not being subject to review or challenge. Claimant at that time (1970) was excepted from the Agreement. But in 1975, he had never returned to the duties encompassed by the Chief Train Dispatcher/Assistant Chief Dispatcher positions.

On the property, the Employees presented a bona fide showing that the duties of Claimant's present Assistant Chief Dispatcher position (in 1982) were the same as those of the Chief Train Dispatcher position on which he sought to assert his seniority for the temporary vacancy; that he had occupied such Assistant Chief's position for four years (when the Employees' Submission was written) without discipline, censure, or warning; and that he had not only worked the day shift as Assistant Chief Dispatcher alongside the Chief Train Dispatcher, but had worked as Assistant Chief Dispatcher on the other two shifts without any supervision, and had even been called on at least one occasion to work as Chief Train Dispatcher, but was turned back by another craft's picket line.

The Carrier did not answer any of the Employees' affirmative evidence during handling on the property, although there was ample time and opportunity to do so. It waited until the writing of its Ex Parte Submission to answer; that is too late. The whole extent of Carrier's on-property defense relied on the two Third Division Awards and boils down to the stark assertion he was without necessary fitness and ability, because he had been removed from the subject position some 13 years previous.

Labor Member's Dissent to Award 27139, continued

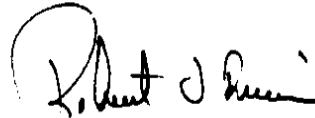
In the face of more contemporary facts, the Carrier's defense was insufficient, patently founded on events of many years past, and subsequent attitudinal conceptions based on those old events.

Third Division Award 19432:

" . . . standing alone, without adequate evidentiary support and explanation, the Carrier's initial reason for non-promotion is but a bare assertion which does not meet the controlling criteria of reasonableness. . . .

. . . In exercising its rights in this area the Carrier must necessarily have wide discretion to make determinations and such determinations will not be lightly altered or set aside by this Board. The Carrier's right and discretion are not absolute, however, and the Carrier must be ever mindful that it may be called upon to demonstrate that its actions have a reasonable and fair basis." (Underscoring supplied)

Having disarmed Carrier's fitness and ability defense, the claim should have been sustained because no other defense was timely offered. Because the Claimant received a rather perfunctory brush-off, in utter disregard of the contemporary facts, this Dissent is respectfully submitted.



Robert J. Irvin
Labor Member