

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29996
Docket No. TD-30655
94-3-92-3-438

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

STATEMENT OF CLAIM:

"Please accept this as my claim for 8 hours pay at W Edwards rate of pay account not called to cover STO position 1st shift Friday March 1, 1991 normally covered by W Edwards worked by D Mulvaney/s/ J D Laventure"
(Carrier System Docket TD-106)

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 employes involved in this dispute are respectively carrier and employe 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.

In June 1989, at the time Conrail consolidated train dispatching offices into six divisional headquarters, Carrier and Organization entered into a Letter Agreement establishing in each office a position entitled "Supervisor Train Operations - Chief Train Dispatcher" (STO-CTD), subject to the Organization's Scope Rule, including the requirement that "qualified train dispatcher[s]...be used to relieve [STO-CTD's]...during temporary vacancies." On March 1, 1991, a vacancy occurred on the first trick STO-CTD position in the Albany Division headquarters office. Carrier did not fill the vacancy with a Train Dispatcher, instead it used a supervisor, not covered by any of the provisions of the Agreement, on the vacancy. Carrier argues that the reason Claimant was not used was because he was not qualified. The Organization disputes this allegation, but further, contends that it is not material, because the Agreement requires that the vacancy be filled by a Train Dispatcher and Carrier is obligated to have sufficient

qualified employees available to do the work covered by the Agreement.

After review of this record, and applicable contractual requirements, the Board is left with no doubts that Carrier is obligated to fill all vacancies in STO-CTD assignments with Train Dispatchers, and, further, it is clear that this obligation is explicitly acknowledged by Carrier. Carrier's principle, defense before this Board, is not that the agreement contemplates that such vacancies will be filled by Train Dispatchers, only that it questions the qualifications of Claimant for the vacancy. Its secondary defense concerns the reparations sought by the Organization.

Neither defense is well founded. When Carrier entered into a special agreement with the Organization that STO-CTD positions would be established in each of the six divisional headquarters offices, and that vacancies occurring in these assignments would be filled by Train Dispatchers, it assumed an obligation to have sufficient manpower available to fill all such vacancies with Train Dispatchers. Accordingly, a failure to properly fill a vacancy in an STO-CTD assignment cannot be excused on the basis of an allegation that Carrier possessed reservations concerning the qualification of the Train Dispatcher that was available to fill the vacancy at the time.

With regard to the reparations sought, had Claimant been used on the vacancy he would have worked the assignment at time and one-half rates. It is immaterial that he may have later been used on another assignment, also at time and one half. He was deprived of the opportunity to fill the vacant STO-CTD assignment at time and one-half and that represents his loss for that job. The Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.