

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30419  
Docket No. TD-30911  
94-3-92-3-776

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

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

STATEMENT OF CLAIM:

"In application of Rule 17 (a) of the American Train Dispatchers agreement, accept this as a claim for Train Dispatcher P. T. Stack for May 26, 1991.

...

Please advise when Mr. P. T. Stack may expect one day pay due the above Claim, at the applicable rate for that SOTO....."

[Exact same claims were submitted on behalf of the following on the listed dates:

A. D. Cravens	May 27, 1991
R. B. Hurst	May 30, 1991
R. B. Hurst	May 31, 1991
G. T. Wiltsie	June 1, 1991]

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Organization asserted on the property that the SOTO/CTD's position had been in place in the Dearborn office for two years and Carrier only qualified one Dispatcher, who was later disqualified. Thus, Carrier had failed to provide enough Dispatchers to cover the needs.

The Carrier responded that on August 20, 1990, Bulletin No. 90-17 was posted to all Train Dispatchers, Seniority District 25 at Dearborn, Michigan, concerning the June 16, 1989 Agreement and all interested Train Dispatchers wishing to qualify were instructed to so advise the Assistant Transportation Superintendent in writing no later than August 7, 1990. It was asserted that only four Dispatchers stated a desire to qualify, but none of the Claimants applied.<sup>1</sup> In addition to the assertion that none of the Claimants applied, or registered any interest in the position (and thus, were considered to be improper claimants) Carrier noted that May 26, and June 1, 1991, were rest days for the position, and May 27, 1991, was a holiday.

The Organization responded by stating that the pertinent Agreement does not require formal application and it argues that the Carrier's logic is flawed since a failure of applicants would result in a release from contractual duty.<sup>2</sup>

Carrier replied that:

"Prior to the claim dates, claimants Stack, Cravens, Hurst and Wiltsie expressed absolutely no interest, either verbally or in writing, in occupying a position of STO-CTD. Claimant Shalda did express interest...which was the primary basis for his claims being sustained. To sustain the claims of Messrs. Hurst, Stack, Cravens and Wiltsie would be to pay penalties to train dispatchers who suffered no loss in work opportunities because they had no intention of ever wanting to occupy a position of STO-CTD...."

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<sup>1</sup> A claim on behalf of one of the applicants for May 28 and 29, 1991 was sustained.

<sup>2</sup> The Organization contends that an internal management memo clearly shows that Carrier recognizes that continued use of a "failure of qualified people" defense will not continue to hold up if no attempts are made to qualify interested employees.

The record in this dispute rather clearly shows that this matter has been a rather volatile one between the parties. In fact, the January 21, 1994 Third Division Award 29996 left no doubt that the Carrier's responsibility was to have qualified Dispatchers available to fill vacancies. But that Award considered a vacancy that was filled by a supervisor rather than a Dispatcher. Nor does the Award deal with the proper identity of the Claimant.

We have a much different question here. In its Submission, the Organization urged that the identity of the Claimants is unimportant. That is not an accurate statement in this type of case. We can only rely on the record before us which shows that none of the Claimants took advantage of Carrier's invitation to become qualified, although certain other employees did so.

The Letter of Agreement may be silent on how employees become qualified, but an invitation to all employees in that regard certainly appears to have been appropriate. If, indeed, there is a conspiracy to prevent qualifying employees, that is not substantiated by any evidence in the case before us.

#### AWARD

Claims denied.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.