Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31056
Docket No. TD-30388
95-3-92-3-135

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Southern Pacific Transportation Company
((Eastern Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Southern Pacific Transportation Company (hereinafter referred to as "the Carrier"), violated the effective agreement between the parties, ARTICLE 2 thereof in particular, when it refused to pay claimant A. W. Moebes the rate of pay applicable to those positions he worked on and after December 18, 1990.

(2) For the above violation, the Carrier shall compensate claimant A. W. Moebes the difference between what he received and the current applicable rate of pay for those positions worked beginning on December 18, 1990 and each subsequent day thereafter."

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.

Article III, Section 1 of the February 26, 1987 National Agreement states:

"Section 1 - Service First 60-months

Employees entering service on and after the effective date of this Article on positions covered by an agreement with ATDA shall be paid as follows for all service performed within the first sixty (60) calendar months of service:

(a) For the first twelve (12) calendar months of employment, new employees shall be paid 75% of the applicable rates of pay (including COLA).

(b) For the second twelve (12) calendar months of employment, such employees shall be paid 80% of the applicable rates of pay (including COLA).

(c) For the third twelve (12) calendar months of employment, such employees shall be paid 85% of the applicable rates of pay (including COLA).

(d) For the fourth twelve (12) calendar months of employment, such employees shall be paid 90% of the applicable rates of pay (including COLA).

(e) For the fifth twelve (12) calendar months of employment, such employees shall be paid 95% of the applicable rates of pay (including COLA).

(f) Employees who have had an employment relationship with the carrier and are rehired will be paid at established rates after completion of a total of sixty (60) months' combined service.

(g) Service with the carrier in a craft represented by another organization shall also be included in determining periods of employment under this rule.

(h) An employee who has had a previous employment relationship as a qualified dispatcher with a carrier and is subsequently hired by another carrier shall be covered by this Article. However, such employee will receive credit toward completion of the sixty (60) month period for any month in which compensated service was performed as a qualified dispatcher provided that such compensated service last occurred within one year from the date of subsequent employment.

NOTE: The term "qualified dispatcher" includes qualified employees represented by the ATDA in other positions.

(i) Any calendar month in which an employee does not render compensated service due to furlough, voluntary absence, suspension, or dismissal shall not count toward completion of the sixty (60) month period."

This dispute centers on a proper interpretation of Subsections (f), (g) and (h) of Article III, Section 1.

Beginning on December 19, 1990, Claimant was a Train Dispatcher. However, this was neither the first Carrier position that he occupied nor the first time that he had occupied a Train Dispatcher position.

The Carrier hired Claimant as a Maintenance of Way laborer actually during three consecutive summers (1972, 1973 and 1974). In 1974, Claimant worked from May to December so that, at the end of 1974, he had 15 months of total service. From July, 1979 through January, 1983 (43 months), the Carrier employed Claimant as a Train Dispatcher. In January, 1983, after having accumulated 58 months of aggregate Carrier service, Claimant separated from service in exchange for a lump sum payment. Claimant also executed a separation and release relinquishing all of his employment rights.

The Carrier rehired Claimant as a Crew Dispatcher on May 1, 1990. Later in the year, on December 18, 1990, Claimant commenced service in the craft of train dispatching.

The Organization asserts that, despite the breaks in service, all of Claimant's prior service counts towards the 60 calendar month prerequisite set forth in Article III, Section 1 of the 1987 National Agreement. From the Organization's perspective, Claimant satisfied the 60 month requirement at the end of June, 1990.

On the other hand, the Carrier contends that Claimant is akin to a new hire when he started service as a Train Dispatcher on December 18, 1990. Thus, he is subject to the entry level rate progressions in Section 1, Subsections (a) through (e). The Carrier contends that Claimant's prior service does not count because he accepted a lump sum severance allowance and, in exchange, completely surrendered his prior employment rights. Thus, from the Carrier's viewpoint, his prior service became a nullity. The Carrier alternatively argues that Section 1(f) of Article III pertains only to employees rehired into a train dispatcher position as opposed to another craft. In this case, Claimant was rehired in 1990 into the clerical craft and was not subject to Article III. Lastly, the Carrier contends that Claimant should be treated as a new hire because he will have to undergo the same amount of training as someone who has never occupied a Train Dispatcher position. His prior experience as a Train Dispatcher was on an obsolete dispatching system.

This Board is bound to follow the plain and ordinary meaning of the words adopted by the parties in Article III, Section 1 of the 1987 National Agreement. Subsections (f) and (g) are clear and unambiguous. Subsection (f) states that any employee who is "rehired" will be paid 100 percent of the established Train Dispatcher rates upon completion of 60 months of "combined service." The terms "rehired" plus "combined service" evince the negotiators' intention to combine a former employee's prior months of service with the employee's current service when counting the number of months of service under Article III, Section 1 if the Carrier reemploys the worker. Even if, as the Carrier asserts, Claimant's prior employment became a nullity when he accepted the lump sum separation allowance back in 1983, Subsection (f) resurrects his prior services solely for the purpose of counting the prior service towards satisfying the 60 month rate progression requirement. If the negotiators wanted to exclude the prior service of employees who accepted a separation payment, they could have easily expressed such an exception to Subsection (f). If we write such an exception into Subsection (f), this Board would be impermissibly adding terms to the Agreement.

Furthermore, Subsection (g) of Article III, Section 1 broadly defines "service" as work for the Carrier in any craft represented by a labor organization. When Claimant worked as a Maintenance of Way laborer and then later as a Crew Dispatcher, he worked in crafts represented by labor organizations. Since the authors of Subsection (g) used the term "labor organization" in the generic, they obviously meant, contrary to the Carrier' argument, unions besides the Organization herein. Thus, Claimant's service in other crafts was countable.

The Carrier primarily relies on equity in this case. The Carrier submits that it will have to train Claimant and he will not be a fully productive Train Dispatcher for several years, just like a new hire without prior service.

While this Board does not sit to dispense equity between the parties, the plain language of Subsection (g) belies the Carrier's notion that the progressive entry level rates applied to every employee who needed training. Indeed, under Subsection (g), an employee could have been employed five years in another craft and then transferred to train dispatching service and still be required to undergo the full gamut of train dispatching training just like someone hired off the street.

Regardless of length of training, an employee with prior service is given a benefit, i.e., credit for the prior service for pay purposes not afforded to a newly hired person who never before worked for the Carrier. The purpose of giving Claimant and prior employees this benefit was designed to encourage employees in other crafts to accept train dispatching positions either without having to go through the entry level rate progression or to reduce the amount of time it takes the employee to reach the full train dispatcher's rate of pay.

In conclusion the Board finds that the Carrier violated Article III, Section 1. It should have commenced paying Claimant at 100 percent of the rate of the train dispatching positions he occupied commencing on December 18, 1990.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.