

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31057
Docket No. TD-30394
95-3-92-3-17

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
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claims of Z. Elaine Givner for rate of \$145.55 for position MD2A while posting on August 7, 1990, and for position TD Cleveland-East while posting on August 30, 31 and September 2, 1990."

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.

On August 6, 1990, Claimant, who was a Crew Dispatcher covered by the scope of the applicable clerical agreement, performed train dispatching for the first time at the Carrier's Pittsburgh Movement Office. Thereafter, on four days, Claimant broke in on two train dispatcher positions. More specifically, Claimant posted on Position MD2A on August 7, 1990 and she posted on Position TD-Cleveland-East on August 30, 31 and September 2, 1990.

On the four dates that she was posting, the Carrier compensated Claimant at the applicable Crew Dispatcher's rate. In this case, Claimant seeks a difference in pay between the rate of the assignment on which she posted on the four dates and the rate which the Carrier paid her.

The Organization relies on Rule 10, Section 8, which states:

"When, in the opinion of the Chief Train Dispatcher, it is necessary for train dispatchers assigned to territory with which they are not familiar to break in, compensation will be allowed at the rate of the assignment involved for the number of days directed by the Chief Train Dispatcher to break in."

The Organization asserts that Claimant became a qualified Train Dispatcher on August 6, 1990 and so, she attained classification as an Extra Train Dispatcher within the meaning of Rule 1(a). The Organization further argues that inasmuch as Claimant was a qualified Train Dispatcher, the Chief Train Dispatcher found it necessary, in his opinion, for her to post on positions covering territories with which Claimant was unfamiliar. The Organization concludes that regardless of whether or not Claimant had yet attained a seniority date, Article 10, Section 8 mandated that she be compensated at the rate of the positions on which she posted on the four claim dates.

The Carrier argues that the instant claim is either governed by Rule 2, Section 1(b) or, alternatively, is not covered by any rule in the applicable Agreement because Claimant was neither qualified nor held seniority as a Train Dispatcher on the claim dates. Indeed, the Carrier announced that, subsequent to the claim dates herein (September 20, 1990), it removed Claimant from train dispatching training because she lacked the ability to adequately execute train dispatching responsibilities. The Carrier contends that since Claimant did not hold train dispatchers' seniority and was not yet a qualified Train Dispatcher, she was a dispatcher trainee as opposed to an Extra Dispatcher and the former is outside the scope of the applicable collective bargaining agreement.

Rule 2, Section 1(b) states:

"An employee performing dispatching service who has not established a seniority date or an employee entering dispatching service subsequent to the effective date thereof, if not notified prior to completion of the thirtieth day on which he performs dispatching service (not including posting time) that he has failed to qualify, shall be given a seniority date as of the first date on which he performed dispatching (not including posting time) service. When given a seniority date, he may then displace any train dispatcher his junior occupying a position he is qualified to fill, but shall have no claim to service performed by a junior train dispatcher prior to date of such displacement."

The parties concur that Claimant did not hold seniority as a Train Dispatcher on the claim dates but the crux of this claim is whether or not she was a qualified Train Dispatcher which would trigger the application of Rule 10, Section 8.

Although the Organization submits that Claimant became a qualified Train Dispatcher as a result of the one shift of train dispatching service which she performed on August 6, 1990, the record herein contains nothing but the Organization's bare assertion regarding her qualifications. The Organization has not brought forward any documentary evidence indicating that Claimant had become qualified as a Train Dispatcher. Moreover, the fact that Claimant was ultimately deemed unqualified to be a Train Dispatcher strongly suggests that there was no interim period during which she qualified on any Train Dispatcher position.

Implicit in Rule 10, Section 8, is the assumption that the employee posting on the Train Dispatcher position covering unfamiliar territory is qualified on Train Dispatcher positions covering another territory or territories. Absent substantiation that Claimant was a qualified Train Dispatcher on at least one position, there is not any rule in the Agreement which pertained to Claimant's status on the four claim dates. Perhaps, the Agreement contains a loophole but it is not the province of this Board to fill any gaps in the Agreement. Rather, this is an appropriate chore for the parties' negotiators.

This Board emphasizes that its decision herein, that Rule 10, Section 8 is inapplicable to Claimant on the four claim dates, is due to a lack of proof that she was a qualified Train Dispatcher. We do not express any opinion on whether or not Claimant's lack of seniority would either undermine the instant claim or prevent her from being characterized as an Extra Train Dispatcher.

AWARD

Claim denied.

ORDER

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

Form 1
Page 4

Award No. 31057
Docket No. TD-30394
95-3-92-3-17

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Carrier Members' Response
To Labor Members' Dissent
to Award 31057 (Docket TD-30394)
(Referee LaRocco)

We will not respond to the rhetorical banter of the Dissent except to note that both the Carrier and the Organization knew exactly where this Claimant came from.

The Organization asserted that by virtue of working on August 6, 1990, Claimant was a Train Dispatcher. Not so!

In the initial denial of the claim, Claimant was advised as follows:

"You never obtained dispatcher's seniority in accordance with Rule 2 of the ATDA agreement and therefore were not entitled to the train dispatcher's rate of pay while qualifying.

All non ATDA rostered individuals who are qualifying as train dispatchers excepting telegraphs subject to the provisions of Rule 21(b) of the TC Division, TCU collective bargaining agreement, who are utilized to qualify as train dispatchers are to be paid at their former craft.... You were fairly compensated at the rate of your former clerical position, \$117.24/day."

The Organization's only response was to assert that they had no classification for a "train dispatcher trainee". That is correct since seniority and the rights under the contract accrue when an individual qualifies.

On August 6, 1990, Claimant began training. She never did qualify and therefore did not acquire a seniority standing in this craft. She had no standing to demand compensation for something that she was not. The Majority's determination was and is correct

despite the "sound and fury" of the Dissent.


Paul V. Varga


Martin W. Fingerhut


Michael C. Lesnik

Carrier Members' Response
To Labor Members' Dissent
to Award 31057 (Docket TD-30394)
(Referee LaRocco)

We will not respond to the rhetorical banter of the Dissent except to note that both the Carrier and the Organization knew exactly where this Claimant came from.

The Organization asserted that by virtue of working on August 6, 1990, Claimant was a Train Dispatcher. Not so!

In the initial denial of the claim, Claimant was advised as follows:

"You never obtained dispatcher's seniority in accordance with Rule 2 of the ATDA agreement and therefore were not entitled to the train dispatcher's rate of pay while qualifying.

All non ATDA rostered individuals who are qualifying as train dispatchers excepting telegraphs subject to the provisions of Rule 21(b) of the TC Division, TCU collective bargaining agreement, who are utilized to qualify as train dispatchers are to be paid at their former craft.... You were fairly compensated at the rate of your former clerical position, \$117.24/day."

The Organization's only response was to assert that they had no classification for a "train dispatcher trainee". That is correct since seniority and the rights under the contract accrue when an individual qualifies.

On August 6, 1990, Claimant began training. She never did qualify and therefore did not acquire a seniority standing in this craft. She had no standing to demand compensation for something that she was not. The Majority's determination was and is correct

despite the "sound and fury" of the Dissent.


Paul V. Varga


Martin W. Fingerhut


Michael C. Lesnik