

True to 2/19/91 had to pass by court order

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31073
Docket No. TD-28774
95-3-89-3-171

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(St. Louis Southwestern Railway Company

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

Claim #1

- (a) The St. Louis Southwestern Railway Company (hereinafter referred to as the Carrier) violated its train dispatcher schedule working conditions agreement, including Article 1, Section 3(b) [amended to also include Article 4(d)], thereof when on Nov. 29th and Nov. 30th and Dec. 7th and Dec. 14th and Dec. 21st and Dec. 28th, 1986, it permitted and/or required a junior employee to work Excepted Chief Train Dispatcher position when a senior employee was available and qualified to work this position.
- (b) Because of said violation, the Carrier shall now compensate Claimant G. W. Miller 6 days' pay at the pro-rata rate applicable to Chief Train Dispatchers on Nov. 29th, 1986, Nov. 30th, 1986, Dec. 7th, 1986, Dec. 14, 1986, Dec. 21st, 1986, and Dec. 28th, 1986.

Claim #2

I would like to present the following claim on my behalf:

One days' pay at time and one-half rate of pay on Excepted Chief Dispatcher position for Sunday, June 21, 1987.

Junior employee E. R. York with seniority date of 11-23-74 was used by Carrier this date. My seniority date is 5-21-67.

Having worked this position for several years in relief capacity, I informed the Chief Dispatcher that I was available, willing and wanted to work this position but was denied.

This position is a Union position, advertised by Bulletin to the Train Dispatchers by Carrier to be filled by Article 1, Section 3(b), and Article 4(d) of the Train Dispatchers schedule working conditions agreement..."

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.

This dispute involves the filling of a relief position on certain Saturdays and Sundays. On the claim dates, the incumbent of the relief position, Mr. G. E. Atkinson, should have relieved the Excepted Chief Dispatcher for his weekly rest days.

According to the Organization, on the claim dates, Mr. Atkinson was absent; and instead of calling Claimant, who was the senior qualified employee available, the Carrier used a junior Train Dispatcher.

The Organization points to Article 1, Section 3(b), of the Agreement, which states that a Chief Dispatcher's position should be filled by a Train Dispatcher qualified to assume and perform the responsibilities and duties of the Chief Dispatcher; and if the ability is sufficient of more than one available individual, seniority shall govern who gets the work. The Organization contends that the Claimant, as the senior Dispatcher, should have been selected to fill the vacancy when the regular Chief Dispatcher was absent.

After a thorough review of the record here, we find that the Organization has successfully shown that Article 1, Section 3(b), has been applied in concert with Article 4(d) on numerous occasions in the past, and the Carrier always would select the senior Train Dispatcher as long as the ability of that individual was sufficient. In this case, the Carrier did not do that. Consequently, we find that the Organization's interpretation and application of the Agreement is correct and, to that extent, the claim must be sustained.

This Board originally decided this case in Third Division Award 29191 issued April 3, 1992. At that time, although this Board sustained the claim, we denied any compensation to be awarded the Claimant because we did not look favorably on the 16-month delay before this case was submitted to this Board. That aspect of our Award was appealed to the United States District Court for the District of Colorado. That Court ruled on the parties' cross-motions for summary judgment and determined that the Board exceeded its jurisdiction when it refused to award the Claimant any compensatory damages due to the delay in the filing of his claim. The Board ordered that the Award be reversed to the extent that it denied the Claimant compensation for the Carrier's violation of the Agreement. It remanded the case to this Board for proceedings concerning the proper amount of damages.

This Board has reviewed the Court's Order, and we find that the Claimant is entitled to compensation for six days' pay at the pro rata rate applicable to the Chief Train Dispatchers on November 29, November 30, December 7, December 14, December 21, and December 28, 1986. In addition, the Claimant is entitled to one day's pay at the time and one-half rate for Sunday, June 21, 1987.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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