

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31971
Docket No. TD-32278
97-3-95-3-106

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“(A) CSX Transportation, Inc. (‘Carrier’ or ‘CSXT’) violated its train dispatchers’ basic scheduled agreement applicable in the Jacksonville Centralized Train Dispatching Center (JCTDC) including Article 5(c) thereof, when it refused to allow Claimant train dispatcher B. E. Hughes to exercise his seniority rights to position no. 351 on console CF in the JCTDC to be effective March 7, 1994, when CSXT respectfully [sic] changed the method of dispatching by incorporating DTC where previously Rule 93 was in effect on or about March 7, 1994 on BL desk, territory being dispatched by Claimant Hughes.

(B) Because of said violation, and the attendant deprivation of Claimant’s rights to exercise his seniority to obtain position deemed more desirable to him, CSXT shall now compensate claimant,

(1) B. E. Hughes one (1) day’s compensation at the rate applicable to position no. 351 due each date said position is scheduled to work beginning on March 7, 1994 until such date and time claimant is allowed to begin working position no 351 on console cf desk in addition to all other compensation Claimant may be entitled to for such dates.”

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 were given due notice of hearing thereon.

Claimant is a Dispatcher assigned to the BL desk at the Carrier's Jacksonville Centralized Train Dispatcher's Center. In that position, Claimant handled train movement on the territory known as the Corbin Division (Old Road Subdivision).

On February 28, 1994, the Carrier issued Bulletin No. 152 making certain changes with respect to the authority for movement in various blocks of territory. A portion of the territory under Claimant's responsibility (approximately seven miles) went from "Rule 93" to Direct Traffic Control ("DTC").

Under Rule 93, track occupancy is conditioned upon track speed unless it is known that the block is clear. Specifically, Rule 93 states:

"93. Trains may use the main track within yard limits. Unless the main track is known to be clear by block signal indication, all trains must move at Controlled Speed, but not exceeding 20 miles per hour, until the engine reaches the far limits."

However, DTC operation is much more complex. While Rule 93 only takes up the one paragraph set forth above and places limited authority on the Dispatcher, DTC operation covers almost three full pages in the Carrier's Operating Rules Book requiring the Dispatcher, for example, to issue block conditions (either absolute, clear, occupied or proceed) give permission to occupy, issue authorities, flagging procedures and clear blocks. These kinds of requirements do not exist for Rule 93 operations. The result is that under DTC operations on the Old Road Subdivision, Claimant must now directly control all movements whereas before under Rule 93 he had limited direct control in that section.

On March 7, 1994, Claimant sought to exercise his seniority to move off his position to Position No. 351 on console CF. Claimant was not permitted to do so. This claim followed.

Article 5(c) states:

“(c) Exercise of Seniority

A train dispatcher may exercise seniority rights only when:

* * *

(4) Additional territory is added to his assignment, or method of dispatching is first changed.”

The dispute in this case is whether the imposition of DTC authority as opposed to Rule 93 authority over the seven mile section of Claimant’s assigned territory constituted a change in the method of dispatching so as to permit Claimant to exercise his seniority. We find that it did.

When the Carrier imposed DTC requirements over that portion of Claimant’s territory, the Carrier went from the simplified Rule 93 operation to the much more complex DTC requirements. The Carrier expanded DTC territory on Claimant’s assignment. Clearly, the Carrier has the authority to do so. However, under Article 5(c) the “method of dispatching” was therefore “changed” which entitled Claimant to exercise his seniority to assume another assignment.

The Carrier’s reliance upon Third Division Award 22375 is not persuasive. This was not a mere adding of responsibilities. This was a significant change in the method of dispatching.

The fact that Claimant may have had DTC responsibility on different parts of his territory or performed those functions in the past is also not persuasive. The applicable Rule examines whether there was a change in the method of dispatching, not whether the Dispatcher had previously performed the work. On the merits, the claim will therefore be sustained.

With respect to a remedy, Claimant shall be entitled to exercise his seniority to Position No. 351.

With respect to compensation as part of the remedy, the Carrier argues that Claimant suffered no monetary loss because the pay rates for the two positions are identical. The Organization disagrees.

Article 2(f) states:

“ARTICLE 2
COMPENSATION

* * *

(f) Off-Assignment Work

A train dispatcher holding a regular assignment who is required to fill an assignment other than that obtained in the exercise of seniority shall be compensated at one and one-half (1 1/2) times the rate applicable to the assignment filled.

Employees so used will be paid for not less than the number of days for which they would have received pay had they worked their own assignment. Any additional days due under this Section (f) will be paid for at the straight time rate of the employee's own assignment.”

See also, Award 22375, supra where Dispatchers improperly kept from working their assignments were compensated.

Claimant is therefore entitled to monetary relief. Under the circumstances, the matter is now remanded to the parties for computation of the remedy.

AWARD

Claim sustained in accordance with the Findings.

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 6th day of May 1997.