

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31979
Docket No. TD-32399
97-3-95-3-259**

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: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"The Carrier violated Paragraph E, subsection 3 of Rule 5 and other rules of ATDA Contract dated Sept. 1, 1979 on Monday Dec. 13, 1993. The Carrier diverted me from my hold down MDA to work desk 2-2 vacancy of M. L. Martin.

Because of this diversion, I was unable to work the vacancy of R. G. Stallsmith MD1A on Dec. 14, 1993. R. J. Dzurk was forced to double, because of no relief.

Allow Claimant 8 hrs. time and 1/2 for MD1A Dec. 14, 1993."

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.

At the time of the claim, Claimant was permanently assigned as a Guaranteed Assigned Train Dispatcher. In accord with Rule 4, Claimant was temporarily assigned to work the second shift as Assistant Chief Train Dispatcher - West position. On December 13, 1993, the Carrier required Claimant to temporarily suspend his work assignment on the second shift ACTD - West position and instead required Claimant to perform service on the second shift Desk 2 trick Train Dispatcher's position, a position covered by Hours of Service. As a result of that Hours of Service coverage, Claimant then lost an opportunity to perform service on a vacant position on a different shift on December 14, 1993. This claim seeks payment to Claimant for the lost work opportunity on the vacancy.

There is no claim that Claimant was improperly diverted on December 13, 1993. The claim is that as a result of the diversion which caused Claimant to be covered by Hours of Service which precluded Claimant from filling a vacancy on a different shift on December 14, 1993, that the Carrier should be responsible for that lost work opportunity. While Claimant perceives the action as inequitable, there is no rule support for the proposition that because the Carrier exercised its prerogatives under the Agreement that the Carrier must nevertheless be responsible for the lost work opportunity. The burden is on the Organization to demonstrate a violation of a specific provision of the Agreement. That burden has not been met.

Third Division Award 27936 cited by the Organization is not persuasive. In that case, the Board determined that where an employee is temporarily assigned to an Hours of Service covered position which precludes the employee from working that employee's "regular" assignment, the Carrier should compensate the employee for that loss. That makes sense because, in that kind of a case, it is the Carrier's action which causes the inability of the employee to work his regular assignment. Here, however, Claimant was not precluded from working his regular assignment by operation of Hours of Service. Claimant was precluded from filling an overtime vacancy on a different shift which was then given to another employee.

The fact that the Organization contends that a similar claim was previously settled on the property does not change the result. That one instance is not a past practice that can be used to explain the intent of an ambiguous contract provision. Nor is that one instance sufficient to rise to the level of a term of the Agreement.

Without more, the claim must be denied for lack of rule support.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 1997.