

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32375
Docket No. TD-31868
97-3-94-3-190

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

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Please allow 1 hour pay for posting J. A. Ulasiewicz on the following dates, Jan 31, Feb 1 - 2 - 3 - 4 - 7 - 8 - 9 - 10 - 11 - 14 - 15 - 16 - 17 - 18 - 21 - 22 - 25, for a total of 18 hours at this time.

/s/ Edward J. Head”

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.

On the dates noted in the Statement of Claim, Claimant, a Guaranteed Assigned Dispatcher, was used to provide instruction to Dispatcher J. A. Ulasiewicz. Mr. Ulasiewicz, until January 29, 1993 had (for approximately 13 months) occupied a

position of Assistant Chief Train Dispatcher and Train Dispatcher Relief on Trick-1. Effective January 31, 1993 he was assigned to his newly bid position, Train Dispatcher Relief - Desk 5. Mr. Ulasiewicz was not immediately qualified for Desk 5, thus the need for instruction from Claimant.

The Organization contends that Claimant was entitled to extra pay for instructing Mr. Ulasiewicz, under authority of Rule 10, Section 7, reading:

“When prospective or extra employees are posting, the train dispatcher who instructs for the preponderance of the time shall be allowed one (1) hour additional pay at the straight time rate. This rule will not apply when other train dispatchers are posting or breaking in.”

The Organization argues that Mr. Ulasiewicz was not (at the time of the claim) qualified for Desk 5, therefore he was a prospective employee, as that term is used in the Rule, and he was being trained by Claimant, therefore Claimant is entitled to additional pay, as stated in the Rule. Further, the Organization says, there are two Third Division Awards of this Board, 25692 and 29521, that have previously decided a dispute involving the same parties and same Rule, thus, res judicata applies.

The Carrier says that Ulasiewicz was not a prospective or extra employee at the time he was being trained by Claimant, to qualify for assignment to his newly bid Desk 5 position. Mr. Ulasiewicz was a Dispatcher, and had worked as a Dispatcher for several years. His status was clearly that of a Dispatcher breaking in, the condition covered by the second sentence of the Rule. The Rule does not apply in situation when a Train Dispatcher is posting or breaking in on a new position, Carrier insists.

The Carrier argues that Ulasiewicz cannot be treated as a prospective employee because he already was a qualified Train Dispatcher. To say that he was a “prospective” employee would be to given a new meaning to the term “prospective,” it argues. Furthermore, the two Awards relied on by the Organization involved different facts, thus they are not controlling, Carrier insists.

This case turns on the simple issue of Mr. Ulasiewicz’ status during the 18 days that he was being trained by Claimant. If Mr. Ulasiewicz can be considered as a “prospective or extra employee” then the claim is valid. If, on the other hand Mr.

Ulasiewicz' status was that of an "other train dispatcher posting or breaking in" then the claim is not valid, as the Rule, by its very language, would not apply. At first blush, it would seem obvious that Mr. Ulasiewicz was not a prospective employee. He already had Dispatcher seniority and had worked as a Train Dispatcher since at least December 7, 1991. In fact his employment history indicates that just before bidding and receiving the Desk 5 job, Mr. Ulasiewicz held one dispatching position for nearly 13 months. With this employment history in these circumstances it would be disingenuous to accept his status as a "prospective or extra employee" under the Rule.

The Board has studied with care the two Awards that the Organization contends have decided the issue of payment of "training time." In the first, Award 25692, the trainee was not a qualified Train Dispatcher at the time, never previously having worked in the Craft. This fact alone distinguishes Award 25692 from the case under review here, but additionally, the language in the Award makes it clear that it did not deal with:

[P]aying extra compensation for instruction of previously qualified Train Dispatchers who might need to requalify for a particular assignment.

The second, Award 29521, dealt directly with Guaranteed Assigned Dispatchers who were required to become qualified on all positions in a particular dispatching office and if they did not, they would be disqualified from their GAD position. These facts distinguish Award 25692 from the matter under review here. Nowhere in this record is the Board told that if Ulasiewicz did not qualify for Desk 5 this would require that he be disqualified as a 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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of December 1997.

Labor Member's Dissent
Third Division Award No. 32375
Referee Fletcher

Strong dissent is registered to this Award as it disregards the record of this case and the established precedent on the property.

However, the majority did get the core issue right. That is, if Ulasiewicz can be considered a prospective or extra employee, the claim is valid. The problem is, the majority based its decision on a misunderstanding of previous interpretations of the last sentence of Rule 10, Section 7, and ignorance of cited contract provisions which prove Ulasiewicz was indeed a prospective employee.

Award 25692 of this division was the first to deal with this Agreement Rule. While it is true that in Award 25692, the trainee was not previously qualified as a train dispatcher, that Award very clearly interpreted the last sentence of Rule 10, Section 7 which reads:

"This rule will not apply when other train dispatchers are posting or breaking in."

In reviewing Award 25692, it is difficult to understand how this majority could have misunderstood. In that case, the Carrier's position was that the trainee was "another train dispatcher posting." Thus, in accordance with the above quoted sentence, the Carrier was excused from paying the one hour's compensation. But, when the Board reviewed that language in the context of the Carrier's argument, the Board held:

"...the exception upon which the Carrier relies had been intended to excuse the Carrier from paying extra compensation for instruction of previously qualified Train Dispatchers who might need to requalify for a particular assignment." (emphasis added)

From Award 25692, it can easily be seen that "other train dispatchers", as that phrase is used in the last sentence of Rule 10, Section 7, includes those previously qualified who are **requalifying** for an assignment. Such was not the case with Ulasiewicz and the record in this case proves it.

In an October 25, 1993 appeal letter, the General Chairman points out that "all the claimants¹ were instructing prospective dispatchers who bid in positions and were learning their new assignments. Your definition is limited to only guaranteed train dispatchers, but the rule clearly states prospective or extra dispatchers." (Emphasis in original). The General Chairman was correct in stating that any decision concerning Ulasiewicz' status, must include consideration as to the prospective nature of his position. The rule requires it. In other words, if Ulasiewicz was "another train dispatcher posting" he would not be subject to any disqualification provisions contained in the Agreement.

The problem is, the record of this dispute is replete with references to the possibility of Ulasiewicz being disqualified if he failed to demonstrate an ability to perform the duties associated with his new position. For example, in a January 10, 1994 letter the ATDD President said:

"While it is true that the employees receiving instruction were not 'extra train dispatchers' or 'GATD's'², the fact remains that they were 'prospective employees' for the position upon which they were receiving training. Until they had satisfied all the qualifying requirements of the Carrier, they were subject to disqualification pursuant to Rule 4(d) and Rule 6. As such, those receiving training in these cases could only be considered 'prospective employees for the particular position involved."

The Carrier never even responded to the position taken by the Union on this point.

Rule 4(d), which was included in the Employees' Ex Parte Submission, sets forth the availability of time for a successful applicant to qualify on a position.

Rule 4(d)

...

"The successful applicant for a bulletined position shall be permitted to qualify on such position for a period of time to be determined by agreement..."

¹ There were multiple Claimants, including Ulasiewicz, involved in the General Chairman's appeal letter.

² Guaranteed Assigned Train Dispatchers

Rule 4, Section 1 (j), was cited by the Employees as proof of the prospective nature of Ulasiewicz' status while being trained by the Claimant.

Rule 4, Section 1(j)

"An employee who is **unable to qualify on a position obtained by award** or displacement must revert to his former position, if not abolished or permanently filled..." (emphasis added)

Rule 6, which was also included in the Employees' Ex Parte Submission, specifically addresses the probationary status of employees who are training on positions;

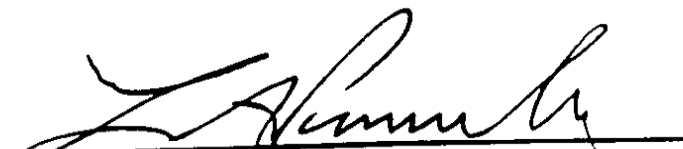
Rule 6

"When it develops that a train dispatcher cannot continue to satisfactorily perform the duties of his position and is removed therefrom, he may exercise seniority under Rule 2, Section 4, subject to agreement between the Manager-Labor Relations and the Office Chairman."

Collectively, these rule prove that employees who are awarded a position and are obtaining their qualification thereon, are indeed prospective. Moreover, in light of the above rules, it is beyond belief that the Majority could conclude "Nowhere in this record is the Board told that if Ulasiewicz did not qualify for Desk 5 this would require that he be disqualified as a Train Dispatcher."

This matter has been decided correctly by Awards 25692 and 29521. Award 32375 is palpably erroneous for the reasons set forth above and useless as precedent

I dissent.


L. A. Parmelee, Labor Member