

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32377
Docket No. TD-31987
97-3-94-3-352

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:

"Claim of R. A. Parmelee:

Please accept this as a claim for a day's pay [3/3, 3/4, 3/10, 3/11, 3/23, & 3/24/93] for the overtime rate of pay, as I was required to attend train dispatchers school/Rules class on my rest days."

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 established seniority as a Train Dispatcher effective June 18, 1985. Immediately preceding the events giving rise to the claim under review here, Claimant last worked as a Train Dispatcher on September 3, 1985, when he exercised seniority to a Block Operator position. Commencing September 27, 1986, Claimant began a

prolonged absence from service due to a non-occupational disability. On December 18, 1992, Claimant was medically qualified to return to duty, with certain limitations. Carrier improperly withheld him from service until January 18, 1993, at which time his claims alleging that he was wrongfully denied a return to work were settled with payment for time lost.

On January 22, 1993, Claimant submitted a written request to displace on Dispatching Assignment A-2, which had been advertised on January 5, 1993, and was filled by a junior employee on January 11, 1993. The displacement was allowed because the job had been bulletined during Claimant's absence from service, but before effecting Claimant's assignment to position A-2, Carrier required that he attend Train Dispatching School, and pass the Book of Rules. The six days noted in the Statement of Claim March 3-4-10-11-23-24, 1993, were rest days of Dispatching Assignment A-2. Claimant attend Dispatching School on these dates. His claim before the Board seeks compensation at time and one-half for service performed on assigned rest days.

The Organization contends that it was improper for Carrier to consider Claimant the same as an employee attempting to qualify as a Train Dispatcher, and refuse to allow him to displace on to a job he was entitled to work until after he had attended Train Dispatching School and passed the Book of Rules. The Organization argues that Rule 4, Section 1(d), Rule 4, Section 1(j), and Rule 10, Section 8, contemplated that Train Dispatchers with antecedent seniority, when the successful applicant, be assigned to the position and be permitted to qualify for the length of time determined through agreement between the General Chairman and Division Superintendent. If Carrier considered Claimant unqualified for assignment A-2, it could provided a training period, but only after he was given the job, and had Claimant been given the job, he would have been eligible for overtime pay when training on the rest days of the job, as provided in Rule 15(b) and (c).

Carrier argues that Claimant was not a regularly assigned Train Dispatcher when he was required to attend Train Dispatching School before being allowed to displace unto Position A-2. As such he was not entitled to penalty payments for attending classes on the rest days of Position A-2. Carrier insists that it was privileged to withhold Claimant from Position A-2 until it was certain that he was qualified, in view of the long period of time that he had been away from dispatching. Because he had not been allowed to take up assignment on Position A-2, he was not a regularly assigned Train Dispatcher with assigned rest days that would trigger any overtime payments that may be required Rule 15(c).

The Board concludes that Carrier's application of the Agreement in this instance is incorrect. It is obvious that it treated Claimant the same as a new candidate for a Train Dispatcher assignment, i.e., an employee without Dispatcher seniority, instead of that of a Train Dispatcher that had seniority and was displacing onto a position that had been bulletined during his absence. The parties Agreement contemplates that Train Dispatchers bidding or displacing onto other assignments may be required to participate in on-the-job training to qualify. This is specifically spelled out in Rule 4 and 10. It does not contemplate that the employee be denied placement on the job and sent to Dispatching School, the same as new applicants.

When Claimant was directed to attend Dispatching School on the rest days to the assignment that he was entitled to be placed on by reason of his seniority, he was entitled to be compensated as provided in Rules 10 and 15 of the Agreement.

The claim has merit. It will be sustained.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

CARRIER MEMBERS' DISSENT
TO
THIRD DIVISION AWARD 32377, DOCKET TD-31987
(Referee Fletcher)

After a six year absence, Claimant was required to attend Train Dispatcher school. There was no dispute that the Claimant at the time WAS NOT QUALIFIED. In the on-property handling, the Organization stated:

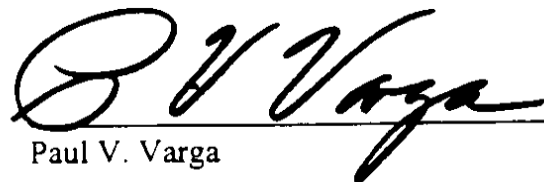
"While the Claimant was admittedly not qualified..."


Position A-2 was bulletined on January 5, 1993 and awarded to Dispatcher Zeigler who held the position in March 1993. Claimant did not become qualified until March 26, 1993 which is beyond the claim dates. This decision simply ignores the Carrier's very real concerns, admitted on the record, that Claimant was NOT QUALIFIED to hold any train dispatcher position at the time.

It is nothing but fiction to conclude that Claimant could have been the successful applicant for position A-2. The Majority's reference to Rules 4 and 10 on page 3 of the decision are misplaced. Those rules deal with the successful applicant and training for dispatchers assigned to unfamiliar territory. In this matter, Claimant had not worked for over six years. It was prudent for the Carrier to make sure that Claimant at least met the minimum requirements for working as a train dispatcher BEFORE permitting him to hold a position.

Finally, March 23, 1993 was not a rest day of position A-2. As such it cannot be included in a payment predicated upon alleged rest day entitlement.

We dissent.


Paul V. Varga


Michael C. Lesnik


Martin W. Fingerhut

January 13, 1998