

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35018
Docket No. TD-35401
00-3-99-3-321**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen 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 schedule agreement applicable in the Jacksonville Centralized Training Dispatching Center (JCTDC) including but not limited to ARTICLE 5 Section(c) Exercise of Seniority and ARTICLE 2 COMPENSATION Section (f) Off Assignment Work thereto when it denied Claimant William J. Estep, ID#161641 the right to exercise his seniority under ARTICLE 5 to a more desirable position, the 2nd shift BI Desk ACD COBU East, when the carrier added territory, namely the “SC” desk to his responsibilities as Network ACD on or about 0700 hours April 27, 1998.

(B) Because of said violation CSXT shall now:

- (1) compensate Claimant W. J. Estep ID# 161641 one days pay at the proper rate of pay as defined under ARTICLE 2 COMPENSATION, applicable at Assistant Chief Dispatchers rate in the JCTDC for each day he is held away from his desired position commencing April 27, 1998 and continuing until such remedy is realized and including any other additional compensation, including overtime, that he would have been entitled to on the 2nd shift ACD COBU East ‘BI’ Desk.**

- (2) allow Claimant to exercise seniority at the earliest possible date to his desired position, namely the 2nd shift ACD BI Desk COBU East.”

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 March 23, 1998, the Carrier announced that it intended to make certain console changes, the relevant one to this matter being “CS” console covering the CC Subdivision on the first and second shifts Monday - Friday only. The Carrier contends that the change was only to administrative duties and did not constitute territory being added to the Claimant’s assignment. The Carrier further contends that Article 5 applies to regular Train Dispatchers who are actively engaged in the movement of trains and not to Assistant Chief Dispatchers.

The Organization pointed out that the Claimant was regularly assigned to the 2nd shift Network Assistant Chief Dispatcher position in the JCTDC and had, in the course of his assignment, endured the addition of the CQ, AY, CR, and BD consoles prior to the assignment of the CS console. Its position was that the addition of the fifth console constituted an expansion of duties and territories warranting the relief requested. The Organization also claims that Article 5 applies to all of the positions listed.

Article 1 (a) defines the term “Train Dispatcher” as being inclusive of Chief, Assistant Chief, Trick, Relief, and Extra Dispatchers. Accordingly, the Board finds

that if in fact additional territory had been added to the duties of the Claimant, he would be covered by the provisions of Article 5.

The Organization argues that the addition of the last console was in effect the straw that broke the camel's back. It points out that additional duties had previously been added to the job and that as it now exists the only conclusion to be reached is that this is an addition of new territory. The Carrier in its letters dated July 15 and September 17, 1998 stated that the Network Assistant Chief Dispatcher fills vacancies and other administrative duties and that the claim is not supported by the Agreement.

In cases of this nature the burden of proof resides with the Organization and other than its mere allegation that the addition of the console constituted new territory there is no evidence in the record to support its position. There is a clear distinction between additional job duties and new territory and the Organization introduced no evidence to prove that the action of the Carrier was other than to merely add new job duties. The Organization failed to sustain its burden and our finding is for the Carrier.

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 25th day of October, 2000.