

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35172
Docket No. TD-35735
00-3-99-3-711**

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: (
(Burlington Northern Santa Fe Railway Company**

STATEMENT OF CLAIM:

“The Burlington Northern Santa Fe Railroad Company (hereinafter referred to as the ‘Carrier’) violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as the ‘Organization’), Article III D in particular, when, during the last week of February 1998, the Carrier arbitrarily placed train dispatcher J. S. Velasquez into the pool of former ATSF train dispatchers who elected to retain their former working conditions and benefits.”

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 December 24, 1997, the parties entered into an Agreement designed to address what they characterized as specific and unique issues at The Burlington Northern and Santa Fe Railway Company. Article III D provides:

“Former ATSF dispatchers who are working in a promoted status as of the date of this Agreement, other than a SOC dispatcher, as shown in Attachment ‘A’ will be given a new seniority date of Dec. 24, 1997 on the BNSF/ATDD seniority roster in the same relative rank order among each other as shown thereon. These employees shall be subject to Article IV, Section 2 of the February 26, 1987 national agreement addressing seniority retention. Upon returning to dispatching service, these employees shall return to the Guaranteed Assigned Train Dispatchers Board as provided in the BNSF/ATDD labor agreement. Placement on a permanent or temporary vacancy shall be in accordance with applicable BNSF/ATDD labor agreements and with the prior rights established in this Agreement.”

The employee in question, J. S. Velasquez was listed as exempt, on Attachment A appended to the December 24, 1997 Agreement. Thereafter on February 12, 1998, the Carrier directed a letter to the Organization indicating certain corrections with regard to the Attachment. The letter summarized the changes and did not indicate any alteration in the status of Velasquez. The Attachment A, however, reflected Velasquez as being non exempt.

The parties have submitted portions of a transcript of the Union Shop Hearing that occurred in May 1998, well after the December 24, 1997 Agreement and the February 12, 1998 corrections. The Carrier also submitted a Workforce Information Notice (WIN) form which purports to show Velasquez being transferred to a Dispatcher position on December 16, 1997.

The Organization takes the position that the Attachment “A” to the December 24, 1997 Agreement, controls. The Carrier contends that the revised Attachment submitted on February 12, 1998, controls. Each party finds support for its position in the testimony of Velasquez during the subsequent May 1998 Union Shop Hearing.

The cover letter sent to the Organization by the Carrier, on February 12, 1998, on its face, appears to set forth all changes to the Attachment. There is nothing in the

record to indicate that the Organization agreed to the content of the Attachment, and it was entitled to rely upon the cover letter for what was represented therein. The transcript of the May 1998 Hearing contains contradictory testimony and is of no value. The WIN form is inconclusive and does not clearly indicate Velasquez' status. In addition this document is dated January 5, 1998, subsequent to the December 24, 1997 Agreement.

Finders of fact must exercise great care in relying upon parol evidence, when interpreting a written Agreement. In this case, the December 24, 1997 Agreement clearly sets forth the intention of the parties. The Attachment shows Velasquez as being exempt. It is determined that this is the controlling factor in the case and that the provisions of the Agreement must be applied to Velasquez as an exempt employee. The record is insufficient to provide guidance for any other remedy, other than as set forth herein.

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 20th day of December, 2000.