

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35987
Docket No. TD-35927
02-3-99-3-908

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Department/
(Brotherhood of Locomotive Engineers
(Burlington Northern Santa Fe Railway (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“The Burlington Northern Santa Fe 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’), Letter of Agreement dated May 31, 1973 in particular, when on November 20, 1998, the Carrier allowed and/or required a junior train dispatcher to protect the position of 1st Trick Birmingham North and provided compensation at the overtime rate of pay, rather than allowing train dispatcher M. G. Culbertson, the senior qualified train dispatch available under the Hours of Service, to protect the aforementioned position at the overtime rate of pay.”

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.

The May 31, 1973 Letter of Understanding provides that a vacancy is initially filled with an available extra Train Dispatcher with less than five days’ dispatching service within seven consecutive days; if no such extra Train Dispatcher is available, then the position is offered to the regular incumbent. Absent the incumbent’s

availability, the Letter of Understanding calls for offering the position to "the senior qualified train dispatcher available under the 'Hours of Service Law.'"

On November 20, 1998, a vacancy existed in the First Trick Birmingham North position. The Carrier filled the position with a Train Dispatcher junior to the Claimant, who, according to the Organization, was available for such service.

In the absence of other circumstances, the Organization would be on firm ground in arguing that the Carrier violated the Letter of Understanding and that remedy is due to the Claimant. The difficulty with the Organization's position, however, is that there were factors in the situation here under review that clearly left the Carrier with no alternative and warranted the action taken.

The Claimant was called for a different first trick position for November 20, 1998 (Position No. SE194) and exercised his right to decline the offer. This exhausted the list of qualified Train Dispatchers available under the Hours of Service Law. The Carrier then called another Train Dispatcher in advance of the first trick, advising him that he would be assigned off his first trick Position No. SE196 on November 20 in order to fill the SE194 position. In addition, another Train Dispatcher was called from the overtime list to protect the now-vacant SE196 position.

It must be emphasized that none of these moves was the basis for the claim here under review. However, upon reporting for duty on November 20, the Train Dispatcher regularly assigned to Position No. SE196 stated, according to the Carrier, that he was "not comfortable" with Position No. SE194 and was permitted to work his regular assignment. (The claim also does not concern this judgment call by the Carrier.) Because there was an immediate need to cover the original vacancy, the Chief Dispatcher moved the incumbent of the First Trick Birmingham North position to the SE194 position.

It was at this point that the junior Train Dispatcher, who had already been called on overtime and had reported, was directed to fill the suddenly created Birmingham North vacancy.

While the Organization's reading of the Letter of Understanding is accurate, no explanation is offered as to how the Claimant could have been "available" to fill a vacancy on a trick that had already commenced. The Train Dispatcher utilized on the Birmingham North vacancy had already been called in sequence on overtime, reported as directed, and was available to take on the unanticipated vacancy caused by the chain of transfers unchallenged by the Organization.

Two other aspects, discussed by the parties, require comment. First, there is lack of agreement as to whether the Claimant declined any overtime work on November 20 or whether he was specifically declining the call to work Position SE194. Second, the

Carrier argues that it had no obligation to offer the Claimant a different first trick vacancy after the Claimant had declined an initial first trick position. The Board concludes that neither of these aspects is determinative in resolving the dispute and therefore draws no conclusions in reference to them.

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 19th day of March, 2002.