

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 44463  
Docket No. 45531  
21-3-NRAB-00003-190444

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

(American Train Dispatchers Association  
**PARTIES TO DISPUTE:** (  
(CSX Transportation, Inc.

**STATEMENT OF CLAIM:**

“CSX Transportation, INC. (CSX or Carrier) violated the Train Dispatchers' Basic Schedule Agreement (CBA) applicable in the Atlanta Dispatching Office including but limited to, Article 6 when the Claimant was removed from the temporary 1st AW position without cause, covered under the CBA. The Carrier violated the Claimant's right to remain on said position in accordance with Article 6 of the CBA.

Because of said violation CSXT shall now:

Compensate Claimant at penalty rate of 4 hours for each day held from said position.”

**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 facts of this case are not in dispute. The Claimant, K.M. Graham, was selected and awarded a temporary vacancy on the first shift “AW” desk beginning on September 29, 2017. He worked the position until November 28, 2017, when the Carrier re-advertised the position and assigned it to another train dispatcher, Brad Williams. The Organization contends that the Carrier’s action violated the Agreement and that the Claimant should be awarded penalty payment for each day he was not allowed to continue in the temporary vacancy, until January 30, 2018, when the temporary vacancy ended.

The fact that this was a right of selection position, the Organization states, does not dictate a different result, contrary to the Carrier’s position. The Carrier did in fact select the Claimant for this position, but no Agreement language supports the Carrier’s assertion that with the right to select comes the concomitant right to deselect, which is what it did when it assigned Mr. Williams rather than the Claimant to the position.

The Agreement provides, in relevant parts:

**Article 1, Scope**

It is agreed that one Chief Dispatcher in each dispatching office shall be excepted from the provisions of/his agreement except as otherwise agreed between the parties signatory hereto.

**NOTE:** Permanent appointment to the position of Excepted Chief Dispatcher shall be made from the ranks of train Dispatchers by selection.

**Article 6, Bulletining and Vacancies**

- (a) **Permanent Vacancies** 1. New positions, including Guaranteed Assigned Train Dispatcher positions, and positions which have been temporarily vacant for more than sixty (60) calendar days, or which are known will be temporarily vacant for more than sixty (60) calendar days (excluding vacation vacancies), shall be bulletined as permanent vacancies. When such permanent vacancies occur they shall be bulletined within six (6) days to all Train Dispatchers on the seniority district.

**(b) Temporary Positions and Vacancies**

- 1. A temporary position or vacancy known to be of more than five (5) workdays may be claimed by the senior qualified regularly assigned Train Dispatcher making application therefor in the office where such position or vacancy exists, or will exist, who must transfer on first date consistent with available relief (including employees available at overtime rate) and the Hours of Service Act, and remain thereon for duration of the temporary position or vacancy, unless displaced therefrom or another regular assignment is acquired pursuant to either Article 5(c) or paragraph (a) of this Article 6, and if a regular assignment is thus acquired, he may, if he so desires, remain on temporary position or vacancy until its termination. If it is later determined that such temporary position or vacancy will be of more than sixty (60) calendar days' duration (excluding vacation vacancies), it will then be assigned in accordance with paragraph (a) of this Article.**

**The Carrier points out that the position at issue was a “right of selection” Excepted Chief temporary vacancy position on the Atlanta Subdivision. The Carrier maintains that as it had the right of selection for filling this position, it also had the right to deselect the Claimant at any time. The Carrier states that it had the managerial right to select the Claimant for the position, and there is no contract provision requiring it to maintain a dispatcher on a right of selection position for a particular length of time. The Carrier asserts that it is well settled that absent agreement language limiting a carrier’s managerial prerogatives, those rights must prevail.**

**In any event, the Carrier states, the Claimant remained in the position at issue for 60 days, and the clear and unambiguous language of Article 6(b) 1. provides that a temporary vacancy does not extend beyond a period of 60 days. As the Claimant remained in the temporary position for the maximum time, the Organization’s claim is moot.**

**Further, the Carrier asserts, pursuant to Article 1, Scope, of the parties’ Agreement, the position at issue, Excepted Chief Dispatcher, is exempt from the Agreement’s provisions absent mutual agreement to the contrary. The Carrier states that this issue has been decided on-property in PLB 6813, Cases Nos. 11 and 13, where, although the claims were granted on procedural grounds, the Board noted agreement with the Carrier’s position on this point.**

**For all of the foregoing reasons, the Carrier states that the Organization has failed to meet its burden of proof and the claim must be denied.**

**The essence of this claim is whether the Claimant had the right to continue in the temporary vacancy at issue until it expired on January 30, 2018. To support its contention that he did, the Organization relies on language in Section 6(b) 1. of the parties' Agreement, that an employee filling a temporary vacancy will "remain thereon for duration of the temporary position or vacancy, unless displaced therefrom or another regular assignment is acquired." As the Carrier states, however, this language is limited by the last sentence of this section, which states, "If it is later determined that such temporary position or vacancy will be of more than sixty (60) calendar days' duration (excluding vacation vacancies), it will then be assigned in accordance with paragraph (a) of this Article." Under paragraph (a), a position temporarily vacant for more than 60 days should be bulletined as a permanent vacancy.**

**It is undisputed that the Claimant filled the temporary vacancy for 60 days. The contract sets forth how vacancies that last longer than 60 days should be handled, as permanent vacancies. If the Carrier were to violate that provision by failing to bulletin the position as a permanent vacancy, the Organization has not shown how such violation would accrue to the benefit of the Claimant rather than to any employees who would have sought the permanent position.**

**The Organization has not demonstrated that anything in the contract entitled the Claimant to remain in the temporary position longer than 60 days. It has therefore failed to meet its burden of proof.**

**We do not reach the Carrier's arguments that because this was a right of selection position it had the managerial right to deselect the Claimant, and that because this was an Excepted Chief Dispatcher position it was exempt from Agreement provisions governing the filling of temporary vacancies.**

**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 10<sup>th</sup> day of June 2021.