

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY—Eastern Lines

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as "The Carrier," violated the currently effective Agreement between the parties to this dispute, including Article II, Sections 10-b and 14, when on Tuesday, August 10, 1954 and Tuesday, August 17, 1954, it failed to use Train Dispatcher J. D. Hunter to perform dispatcher service on Position No. 225, a position for which he was qualified, available and willing to perform service.

(b) Carrier shall now compensate unassigned Train Dispatcher J. D. Hunter a day's pay at time and one-half for Tuesday, August 10, 1954, and for Tuesday, August 17, 1954, these being the days that he was deprived of train dispatcher work to which he was contractually entitled under the rules of the Agreement but which work was performed by Mr. B. D. Cotter, an unassigned train dispatcher junior to Dispatcher J. D. Hunter.

EMPLOYES' STATEMENT OF FACTS: On Thursday, August 5, 1954, unassigned Train Dispatcher J. D. Hunter was used to fill a vacancy in relief position No. 266, hours 4:00 P. M. until 12:00 P. M., in Carrier's Chillicothe, Illinois, train dispatchers' office, Thursday, Friday and Saturday—12:00 P. M. until 8:00 A. M.—three consecutive days. Position No. 266 was assigned Tuesday and Wednesday of each week as rest days.

A second temporary vacancy occurred in Position No. 225, August 7, 1954, hours 4:00 P. M. until 12:00 P. M., daily except Thursday and Friday, rest days assigned to Position No. 225.

Unassigned Dispatcher Hunter filled Position No. 266, Thursday, August 5, Friday, August 6, Saturday, August 7, 1954, 4:00 P. M. until 12:00

(3) Where a practice is widespread and well established the only reasonable inference is that both parties have acquiesced in the practice. See Award No. 6607.

The Carrier has also presented evidence that its practice under the agreement rules relied upon by the Employees has been widespread and well established.

In conclusion, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without support under the governing agreement rules in effect between the parties hereto and should, for the reasons previously expressed herein, be denied in its entirety.

The Carrier is uninformed as to the argument the Employees will advance in their ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the organization's ex parte submission or any subsequent oral arguments or brief submitted by the petitioning organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF THE BOARD: The claimant, J. D. Hunter, an unassigned train dispatcher, asks for compensation for August 10 and August 17, 1954.

The record herein discloses that the claimant, an unassigned train dispatcher, performed five consecutive days' train dispatcher service immediately preceding those two dates.

Article II, Section 10-b, and Article IV, Section 1-b of the Agreement clearly provide that unassigned train dispatchers do not have right to claim work on the sixth and seventh consecutive days.

The claim must therefore be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: F. P. Morse
Acting Secretary

Dated at Chicago, Illinois, this 1st day of October, 1959.