

Award No. 10414

Docket No. TD-10162

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

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

(a) The Chicago & Illinois Midland Railway Company, herein-after referred to as "the Carrier" violated the currently effective Agreement between the parties to this dispute, particularly Article II, Section 10-b, when on Saturday, April 20, 1957, it failed and refused to require or permit unassigned Train Dispatcher W. H. Biggart to perform extra work in its Springfield, Illinois train dispatching office.

(b) Carrier shall now compensate Train Dispatcher W. H. Biggart, a day's pay at pro rata rate for Saturday, April 20, 1957.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between the parties, effective August 16, 1946, on file with your Honorable Board and by this reference is made a part of this submission as though it were fully set out herein.

Article II, Section 10-b and Section 14 which are particularly pertinent to the instant claim are quoted here for ready reference:

"Section 10-b. Temporary vacancies of not more than seven (7) calendar days' duration may be filled in the following order of precedence: (1) as a fifth day of service for any available relief train dispatcher holding a four-day assignment, (2) by the senior qualified and available unassigned train dispatcher who will not thereby have claim to work more than five (5) consecutive days, or (3) as provided hereinafter for a temporary vacancy of more than seven (7) calendar days. A temporary vacancy known to be of more than seven (7) calendar days' duration will be made known to the train dispatchers in the office and will be filled by permitting regularly assigned train dispatchers to place themselves, in accordance with their seniority, on this and any other vacancy, other than that of selected assistant chief dispatchers, resulting from such placement; any such temporary vacancy on which a regularly assigned train dispatcher does not place himself to be filled by the senior qualified and available unassigned train dispatcher who will not thereby have claim to work more than

tended that under the provisions of Article IV Section 8, hereinafter quoted, that Schroll should not have been considered available for service on April 19th and 20th, the rest days of Allen's relief assignment. In making such contentions the employes are obviously inconsistent as they have not so contended with respect to Biggart's filling of the two Schroll vacancies. If only one vacancy had actually existed then Biggart likewise would have been considered as assigned to Schroll's vacancy on the 1st Trick during the entire period April 17th through Friday, April 26th and, therefore, unassigned dispatcher Biggart (ATDA Office Chairman) would not have worked Sunday April 21st as this was a rest day of that assignment:

"ARTICLE IV, Section 8:

Relief and unassigned train dispatchers relieving other train dispatchers on the latter's rest days only shall be paid pro rata rates therefor; when relieving regularly assigned train dispatchers for other than rest day purposes they will take the rate of pay, starting time, rest day and other conditions of the position.

NOTE: Nothing in this agreement shall be construed to create a guarantee of any number of hours or days of work where none now exists."

This Article does not apply to Schroll as he was not a "relief or unassigned train dispatcher".

4. Senior unassigned dispatcher Biggart was not deprived of any extra work or regular relief work of less than 4 days per week and has no claim to work on the 6th or 7th days of work in a week, in accordance with Article IV, Section 1-b, here quoted:

"ARTICLE IV, Section 1-b:

Unassigned train dipatchers who are required to work as a train dispatcher in excess of five (5) consecutive days, relieving other train dispatchers on the latter's rest days only, shall be paid one and one-half times the basic straight time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days." (Emphasis ours)

In fact, claimant Biggart worked 5 days or more both in the week involving the date of this claim and in the following week. He, therefore, has no claim to any work on Schroll's regular assignment which Schroll was privileged to and did work on April 20th.

We, therefore, respectfully request that the claims of the employes in this case be denied.

All data in support of the carrier's position in connection with this claim has been presented to the duly authorized representative of the employes, and is made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Regularly assigned Train Dispatcher R. C. Schroll exercised his rights to fill a temporary vacancy on the Relief Assistant Chief Dispatchers position commencing Wednesday, April 17, 1957, due to the

fact that the regular incumbent of the position had reported off sick. Schroll also performed service on this assignment on Thursday, April 18, 1957 for the same reason. The rest days of the temporary vacancy position are Friday and Saturday. Schroll could not work on April 19, 1957 due to the Hours of Service Law. Schroll worked his own position on Saturday, April 20, 1957. Commencing Monday, April 22, 1957, the Relief Assistant Chief Dispatcher began a five day vacation and Schroll was again used to fill this temporary vacancy.

The Employees state that when Schroll placed himself on the temporary vacancy of the Relief Assistant Chief Dispatcher position, this created a temporary vacancy of more than seven (7) calendar days on his first trick train dispatching position. The Employees further state that the Carrier violated Article II, Section 10(b) when it permitted Schroll to work his first trick train assignment on April 20, 1957.

It is the contention of the Employees that the temporary vacancy on the Relief Assistant Chief Dispatchers assignment was a vacancy from April 17, 1957 to April 28, 1957.

The Carrier contends that there were two temporary vacancies, one when the incumbent reported off sick and one when the incumbent was on vacation.

The Board finds from the facts contained in this docket that Schroll worked two temporary vacancies, one on April 17 and 18, 1957, due to the incumbent laying off sick and one from April 21 through April 28, 1957 due to the incumbent being on vacation. Schroll was properly used by the Carrier to work his own assignment on April 20, 1957. The claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March 1962.