

Award No. 12504
Docket No. TD-14409

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, (hereinafter referred to as "the Carrier") violated Part 1 of the Schedule Agreement between the parties, effective June 1, 1950, Regulation 5-B-1 (c) thereof in particular, when it failed to assign Extra Train Dispatcher R. L. Snyder to perform train dispatcher service to which he was contractually entitled in Carrier's Williamsport, Pennsylvania train dispatching office on June 14, 1962.

(b) The Carrier be required to compensate the individual claimant herein for the difference between applicable train dispatcher rate and the amount he was compensated as Block Operator, Lock Haven, Pennsylvania, because of said violation.

EMPLOYES' STATEMENT OF FACTS: There is a schedule agreement in effect between the parties, effective June 1, 1960, copy of which is on file with this Board, and the same is incorporated into this submission by reference, the same as though fully set out herein.

Part 1 of the Agreement is applicable to Train Dispatchers and the provisions of Regulation 5-B-1 concerning relief and extra train dispatcher work which are material to this claim are quoted here for ready reference.

"(c) Except as provided in the foregoing paragraph (b) of this Regulation (5-B-1), relief assignments of less than five (5) days per week will be performed by extra Train Dispatchers.

The assignment of such work to extra Train Dispatchers will be in accordance with seniority and availability except when the use of the senior extra Train Dispatcher would require payment of the punitive rate of pay and a junior extra Train Dispatcher is available who can be used at the pro rata rate of pay. An extra Train Dispatcher

Therefore, the Carrier respectfully submits your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, a Train Dispatcher, was on June 24, 1962, regularly assigned as a Relief Block Operator at Lock Haven Tower, some 28 miles distant from Williamsport, Pennsylvania. On the above date the train dispatcher at Williamsport, was unable to report at 7:00 A.M., his regular tour of duty. The Claimant was the senior extra train dispatcher in the seniority district and was entitled to the resulting temporary vacancy at Williamsport under Regulation 5-B-1 (c).

The Carrier called the Claimant's residence, by telephone, at 5:15 A.M. and was informed that he was on his way to Lock Haven to fulfill his regular assignment, which was to commence at 6:00 A.M. No further effort was made to communicate with the Claimant. Instead, the Carrier filled the temporary vacancy with a junior extra train dispatcher.

The Complainant alleged the Regulation 5-B-1 (c) was violated when it failed to assign him to train dispatcher service on June 24, 1962 at Williamsport, Pennsylvania. He was available for service and if called on the job at Lock Haven he could have covered the position of dispatcher.

The position of the Carrier as stated in the record is as follows:

At approximately 5:05 A.M. on Sunday, June 24, 1962 the Dispatcher at Williamsport advised that he would be unable to cover the assignment that day. At 5:15 A.M. the Claimant was called at his residence in Williamsport for the purpose of assigning him to the vacancy. The Claimant could not be contacted as he had left for his assignment at Lock Haven. As a result, an extra train Dispatcher junior to the Claimant was assigned to fill the vacancy. Thus the Claimant not being at home to receive the call for service was unavailable for service as provided for in the Regulations 5-B-1 (c).

The question to be determined in this dispute is: Was the Claimant available for service as provided for in Regulation 5-B-1 (c)?

Regulation 5-B-1 (c) reads as follows:

"Except as provided in the foregoing paragraph (b) of this Regulation (5-B-1), relief assignments of less than five (5) days per week will be performed by extra Train Dispatchers.

The assignment of such work to extra Train Dispatchers will be in accordance with seniority and availability except when the use of the senior extra Train Dispatcher would require payment of the punitive rate of pay and a junior extra Train Dispatcher is available who can be used at the pro rata rate of pay. An extra Train Dispatcher will not be considered available within the meaning of this Regulation (5-B-1) when working a conflicting tour of duty, unless he can fill the position without violating the Hours of Service Law and unless he is so situated that he can reach the point where the Train Dispatchers' office is located in time to commence work at the starting time of the position."

The above Regulation requires as a condition to assignment on the position that the applicant be the senior man and the available man for the posi-

tion. In addition punitive rates of pay shall not be required, working a conflicting tour of duty or when he can't reach the Train Dispatcher's office in time to commence work at the starting time.

An examination of the matter before us raises the question: Was the Claimant available? We are of the opinion that he was not. The Regulations do not state that the Complainant had to be called at Lock Haven. The facts in this dispute reveal that time and distance were two factors that required the exercise of quick judgment on the part of the employe who made the assignment of the Junior Dispatcher. The assignment of the Claimant to Williamsport would have required another call or calls to Lock Haven. Then efforts to cover that position until an operator was obtained to replace the Claimant. This maneuver also required the Claimant to cover 58 miles before he commenced work. All these duties had to be performed within the period from 5:15 A. M. to 7:00 A. M. An operator had to be at Lock Haven at 6:00 A. M. and Williamsport at 7:00 A. M. Also we must not lose sight of the fact that this was Sunday morning when it is difficult to obtain relief or extra employes.

Thus we are of the opinion that the Regulation 5-B-1 (c) did not require the telephoning of the Claimant at Lock Haven. The Rule implies that a reasonable attempt will be made to communicate with the employe under all the circumstances. The problem was one calling for the exercise of judgment under the facts and circumstances as presented herein. Other employes may have acted differently but the judgment exercised herein was not in violation of the Regulation 5-B-1 (c).

Thus for all practical purposes the Claimant was unavailable for assignment on June 24, 1962 at approximately 5:15 A. M.

This Award is distinguishable from Award 12400 of this Division.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated. That the date of Claim was June 24, 1962, according to the proof and not June 14, 1962, as stated in the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.