

Award No. 13322

Docket No. TD-14656

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY
(Western 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, particularly Article II, Section 10-b, when it failed and refused to permit and/or require Extra or Unassigned Train Dispatcher K. L. Miller to perform service on position No. 2250 in its Clovis, New Mexico, train dispatching office on Tuesday, June 26, and Wednesday, June 27, 1962.

(b) The Carrier shall now be required to compensate Extra or Unassigned Train Dispatcher K. L. Miller at the pro rata rate of train dispatcher for Tuesday, June 26, and Wednesday, June 27, 1962.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with your Honorable Board, and the same is incorporated into this submission as though fully set out herein.

Section 10-b of Article II of the Agreement, in so far as material to this dispute, is here quoted for ready reference:

Article II, Section 10-b:

"Section 10-b. . . . 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 five (5) consecutive days. . . ."

The "Position of Employes" advanced by the Petitioner's General Chairman in his letter of December 23, 1962 also disregarded the Board's decision in its Award No. 8998 which denied a claim of the petitioning American Train Dispatchers Association that unassigned Train Dispatcher J. D. Hunter, who was protecting a temporary vacancy on Relief Dispatcher Position No. 266 in the respondent Carrier's train dispatching office at Chillicothe, Illinois, should have been used on August 10 and 17, 1954 after having worked five (5) consecutive days as train dispatcher immediately prior to each of those dates. The "Opinion of Board" in Award No. 8998 read as follows:

"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.

In conclusion, the respondent Carrier respectfully reasserts that the Employes' claim in the instant dispute is wholly without support under the rules of the current Train Dispatchers' Agreement and should be denied for the reasons set forth herein.

OPINION OF BOARD: In Award 13320, we determined that the occupation of the temporary vacancy on Position 2250 commenced on June 16. We further found that Carrier should have required Claimant to observe the regular working days and rest days of that position from that time until the completion of said assignment.

Applying these principles to the instant case, we find that the Carrier violated the Agreement when it held Miller off work on June 26 and 27, 1962.

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 violated.

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following excerpt that is quoted from the "Position of Employees" in Third Division Award No. 8982 which denied a claim of the ATDA that arose on the respondent Carrier's property:

"The employees wish to direct the attention of your Honorable Board to the letter Mr. Comer addressed to General Chairman Buckingham, dated June 7, 1955, supra, wherein Mr. Comer concedes in unmistakable terms that Dispatcher R. E. Johnson was unassigned on May 16, 1955. Mr. Comer states:

'Dispatcher R. E. Johnson was not permitted to work on Tuesday and Wednesday, May 17 and 18, due to the fact that it would have caused him to work on more than five consecutive days in violation of the prohibition contained in Article II, Section 10-b and Article IV, Section 1-b of the current Dispatchers' Agreement.'

"The employees concur with the statement made by Mr. Comer quoted above. Mr. Johnson certainly was an unassigned train dispatcher. Therefore after he had completed five (5) consecutive days service as a train dispatcher he was eligible and entitled to take two (2) consecutive days off as rest days, which in his case were May 17 and 18, 1955."

It will be abundantly clear from the foregoing that the claimant Mr. Miller did not have an agreement right to the work claimed in his behalf on June 26 and 27, 1962, and the Employees' claim in the instant dispute is wholly without support under the rules of the current Train Dispatchers' Agreement and should be denied.

In appealing the claim in the instant dispute to the Carrier's Assistant to Vice President and highest officer of appeal in his letter of December 23, 1962, quoted in the Carrier's Statement of Facts, the Petitioner's then General Chairman, Mr. R. G. Buckingham, described the "Position of Employees" as follows:

"It is the position of the employees that extra or unassigned dispatcher K. L. Miller was assigned to temporary vacancy No. 2250 on June 16th and was required to perform such on this position until displaced by the regular incumbent of this position or a senior unassigned or extra train dispatcher entitled to such service."

While reference was made to Article II, Section 10-b in the "Statement of Claim" he advanced in his letter of December 23, 1962, it will be observed that the Petitioner's General Chairman did not cite a single rule of the current Train Dispatchers' Agreement as support for the "Position of Employees" he advanced therein, and which is incidentally not supported by any rule of the current Train Dispatchers' Agreement. As a matter of fact, the "Position of Employees" advanced by the General Chairman not only disregarded the terms of Article II, Section 10-b of the current Train Dispatchers' Agreement on which it was presumably based and which expressly provides that unassigned train dispatchers who are used thereunder to protect temporary vacancies "will not thereby have claim to work more than five (5) consecutive days", but also disregarded the terms of Article IV, Section 1-b of the current Train Dispatchers' Agreement which also recognizes and provides that "extra" or unassigned train dispatchers who have worked five (5) consecutive days as train dispatcher " * * * shall not have the right to claim work * * * " on either the "sixth or seventh days."

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of THIRD DIVISION

ATTEST: S. H. Schulty

Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1965.