Award No. 13646
Docket No. TD-14798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, 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 the effective schedule agreement between the parties, Regulation 5-B-1 of Part 1 in particular, when on February 26, 1963, it required a regularly assigned train dispatcher to perform one day of extra work on another assignment instead of filling said one-day vacancy by using the senior available extra train dispatcher.

(b) The Carrier shall now be required to compensate R. F. Strader, the then senior available extra train dispatcher one day's compensation at train dispatchers' rate.

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 made a part of this submission as though fully set out.

For ready reference, that part of Regulation 5-B-1 of Part I, is here quoted in pertinent part:

"* * * * *

(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 will not be considered available within the meaning of this Regulation (5-B-1) when working a conflicting tour of duty, unless he can

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

Carrier has shown that the action here complained of was precisely in accord with the provisions of Regulation 4-D-1 (a) of the applicable Agreement, that said Agreement was not, in any manner, violated and that, therefore, the Claimant is not entitled to the compensation which he claims.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was a block operator and the senior extra train dispatcher. A one day vacancy occurred on the B district February 26, 1963. Strader was available to perform the work as the 26th was one of the weekly rest days on his block operator assignment. If the Carrier had used the Claimant he would have been entitled to time and one-half. No other extra employe was available to perform the work on the B district at straight time. This vacancy was filled by moving the incumbent of the regularly assigned third trick Train Dispatcher position on the A district to the B district and the A district position was filled by an extra Train Dispatcher who had not worked five (5) consecutive days as an extra Train Dispatcher and was not qualified on the B district.

We believe these parts of Rule 5-B-1 to control:

> "(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.
>
> * * * * *
>
> (d) Where, in the performance of extra work, no extra employes are available who can be used at the pro rata rate of pay and it therefore becomes necessary to assign an employe who must be paid at the punitive rate, assignment will be made in accordance with the following order:
>
> 1. Senior available extra Train Dispatcher."

The Carrier was bound to call the Claimant. The fact that such cost the Carrier 50% more is of no greater significance than if the Carrier found they could buy rail at a 50% saving over a purchase contract they had signed. Efficiency is a part of negotiations, not interpretations.

The Carrier cites other rules, but the rules quoted above are the material rules in this case.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1965.

CARRIER MEMBERS' DISSENT TO AWARD 13646, DOCKET TD-14798
(Referee Hutchins)

This award is in error for the following reasons:

1. It failed to give effect to other rules which Carrier relied upon as an aid to the interpretation of Rule 5-B-1 (d) viz. Regulations 4-C-1, 4-D-1 and 5-B-1 (c).

2. It ignored the salient fact that an extra employe was available in District A and he was properly used on that district following the transfer of the regular Train Dispatcher from District A to District B.

3. It ignores a basic responsibility residing in Management that it has the duty to operate efficiently, and we have repeatedly stated this includes the right to have work performed at the straight time rate, as long as it does not violate a provision of the Agreement. **Awards 4869, 5109, 6961, 7169 and 5331.** Regulations 5-B-1 (c) and (d) do not prohibit the exercise of this right, and this is especially true **when the extra employe with less than 40 hours that week is given the work** on District A rather than the extra employe on District B who had already exceeded his forty hours and could have been used only at the punitive rate. In fact, that portion of Regulation 5-B-1 (c) which the Majority failed to quote, supports this conclusion, for it says:

> "The assignment of such work to extra employes will be in accordance with their seniority in the particular class and their availability, except when the use of the senior extra employe would require payment of the punitive rate of pay and a junior extra employe is available who can be used at the pro rata rate of pay. * * * "

Regulation 5-B-1 (d) says:

> "Where, in the performance of extra work, no extra employes are available who can be used at the pro rata rate of pay and it therefore becomes necessary to assign an employe who must be paid at the punitive rate, assignment will be made in accordance with the following order: * * * "

The facts show the Carrier had an extra employe available at the pro rata rate, and in the absence of a prohibition in the contract preventing the transfer of regularly assigned Train Dispatchers temporarily to other positions, the Majority should have followed the line of authority cited, and held that Carrier's actions were in **full compliance** with the Agreement and that no basis for complaint existed.

For the reasons set forth above and others, we dissent.

W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 13646, DOCKET TD-14798

Carrier Members' dissent points to the obvious reason why complaint was made in the instant case, and Award 13646 is correct and should certainly be a deterent to Carrier from doing what was complained of in this dispute — "Moving regularly assigned employes from a position acquired by bid to fill 'extra work' vacancies thus depriving the extra man entitled to that work from performance thereon."

Dissenter would have us believe that the acquisition of a regular position means nothing to one who bids for and successfully obtains a "regular position"; for Carrier may "transfer" or move him from his regular position to perform "extra work" under the guise of economy. This is not so. Regular men are entitled to perform service on their regular positions and extra men are entitled to extra work and if, as in the instant case, Carrier moves a regular man to a vacancy which is properly classified as "extra work", then Carrier is in violation of the Agreement, as this proper Award makes clear. Carrier may not fill an Extra Work vacancy by use of a regular man, irrespective of how many other extra men are qualified to perform service on the subsequent Extra Work vacancy created by Carrier's improper action of transferring or moving regular men.

Dissenters are well aware, or should be, that Rules 4-C-1 and 4-D-1, have no application to the resolution of this dispute, despite Carrier's attempt to have this Board believe that such rules permitted the violative action as here taken.

Any such contention as the Carrier and Dissenters here urge would render meaningless the provisions of the Agreement relating to the acquisition of a regular position, if Carrier were permitted at their whim and fancy to remove regular men from their acquired positions to perform "extra work", even though such procedure might be more economical.

Award 13646 is entirely correct in its holding and properly protects extra men by entitling them to all "extra work" and likewise protects "regular men", by entitling them to perform service on the position which has been acquired by bid and further prevents Carrier from using regular men to perform "extra service", when there are available qualified extra men who are entitled to such service.

R. H. Hack
Labor Member