

Award No. 15407
Docket No. TD-16245

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(a) The Chicago and Eastern Illinois Railroad, (hereinafter referred to as "the Carrier"), violated the Agreement between the parties, Article 4(f) thereof in particular, when on August 26, 1965, it deprived the individual Claimant herein of service which he was contractually entitled to perform.

(b) The Carrier be required to compensate Extra Train Dispatcher L. H. Fralick at the time and one-half rate for August 26, 1965 because of the violation of the Agreement as referred to in paragraph (a) hereof.

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

For the Board's ready reference Article 4(f) particularly material to this dispute is here quoted in full:

"ARTICLE 4.

(f). Extra Work.

Subject to the exceptions found in Article 3 (e) and 5 (b), the senior qualified extra train dispatcher will be called and used for extra train dispatcher service whenever he is available, without regard to loss of time in changing shifts. The senior extra train dispatcher will be considered as being available if he can fill the vacancy without violating the Hours of Service Law, and is so situated that he can get to the point where the train dispatcher's office is located in time to begin work at the starting time of the vacant shift."

(South End) J. W. Wilson was notified to protect the vacancy in question on his rest day."

The relief service in question was a recurring tag-end relief-day vacancy.

There is in effect an agreement between the parties hereto identified as Schedule No. 4 bearing an effective date of December 1, 1950, a copy of which is on file with your Board and by reference hereto is made a part hereof. Involved in the instant case are the following agreement provisions:

ARTICLE 3 (e)

"Regular relief requirements of less than four (4) days per week will be protected by the senior unassigned train dispatcher who will take the rates, starting times and other conditions of each position on which relief service is performed."

ARTICLE 3 (b)

"Extra train dispatchers who are required to work as train dispatcher in excess of five (5) consecutive days 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."

ARTICLE 4 (f)

"Extra Work.

Subject to the exceptions found in Article 3 (e) and 5 (b), the senior qualified extra train dispatcher will be called and used for train dispatcher service whenever he is available, without regard to loss of time in changing shifts. The senior extra train dispatcher will be considered as being available if he can fill the vacancy without violating the Hours of Service Law, and is so situated that he can get to the point where the train dispatcher's office is located in time to begin work at the starting time of the vacant shift."

ARTICLE 5 (b)

"Temporary Vacancies — Seven Days or Less.

Vacancies or new positions of indefinite duration will be filled by the senior available qualified extra train dispatcher for the first seven consecutive calendar days of their duration. After seven (7) days such vacancies will be subject to the provisions of Section C of this Article 5.

OPINION OF BOARD: Article 3 (b) of the applicable agreement states clearly, in its pertinent parts, that:

"Extra train dispatchers who are required to work as train dispatcher in excess of five (5) consecutive days shall be paid . . . but shall not have the right to claim work on such sixth or seventh days." (Emphasis ours.)

The agreement makes no exceptions on this point. Neither can we.

In the preceding Article 3 (a), as Carrier points out,

"Each regularly assigned train dispatcher will be entitled and REQUIRED to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief." (Emphasis ours.)

It is patently clear that Carrier's action, here subject to claim, is fully supported by the applicable agreement.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1967.