Award No. 16033
Docket No. TD-16708

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(a) The Chicago and North Western Railway Company, (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, including Rules 2 (d), 2 (e), 5 (a), 12 (c) and 14 (b) thereof, because of failure to call and use the individual claimant named herein to fill a one-day temporary vacancy on the position of Assistant Chief Dispatcher, at Green Bay, Wisconsin, on December 8, 1965.

(b) The Carrier shall now compensate Train Dispatcher J. A. Lesniak for one day at time and one-half rate of Assistant Chief Dispatcher because of the violation referred to in paragraph (a) above.

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

For ready reference, the Agreement rules referred to in the foregoing Statement of Claim are here quoted:

"2(d) An 'assigned train dispatcher' is one who is filling a position which he obtained through the exercise of seniority rights."

"2(e) On 'extra train dispatcher' is a train dispatcher who has established a seniority date in accordance with the provisions of this agreement but who is not an 'assigned train dispatcher.' "

"5(a) Each regularly assigned train dispatcher will be entitled and required to take two regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest

Bay on Wednesday, December 8, 1965. The claimant, Train Dispatcher J. A. Lesniak, was regularly assigned as Train Dispatcher on the second trick at Green Bay, with rest days of Tuesday and Wednesday, and was on his rest day on the date of claim. The vacancy on the Night Chief Train Dispatcher position regularly assigned to R. S. Takala, was filled on this day by Train Dispatcher E. E. Cigler, who was regularly assigned to Relief Position No. 3, with rest days of Tuesday and Wednesday. The employes contend that in the absence of an extra Train Dispatcher, the claimant should have been called to work on his rest day prior to the junior Train Dispatcher who was used on the vacancy.

On his previous rest days, November 30 and December 1, 1965, the claimant had declined an offer of work on his rest days. Furthermore, on November 24, 1964, he had stated that he had no desire to work any position at the desk of the Chief Train Dispatcher.

On the date of claim, the claimant was not the senior regularly assigned Train Dispatcher on a rest day. Train Dispatcher R. D. Mohr was senior to both the claimant and Train Dispatcher Cigler, and was one of his rest days on the date of claim.

Wednesday, December 8, was only the fifth day that Train Dispatcher Cigler worked during his work week commencing Thursday, December 2, 1965. Prior to December 2, 1965, Train Dispatcher Cigler was assigned to Relief Position No. 2. Applications for a temporary vacancy on Relief Position No. 3 were received until 5:00 P. M., Thursday, December 2, and Train Dispatcher Cigler was assigned to Relief Position No. 3 at that time, as the only bidder on the vacancy. He performed no service on December 2, which was a rest day of Relief Position No. 2, on which he was assigned prior to 5:00 P. M. Likewise, he performed no service on Relief Position No. 3 on that date, because that position was assigned to relieve on the third trick on the Fond du Lac District, commencing at 12:01 A. M. on Thursdays. Therefore, Train Dispatcher Cigler first performed service on Relief Position No. 3 on Friday, December 3, 1965, and also performed service thereon on December 4, 5, and 6. He was off on a rest day on December 7, and was used to fill the vacancy on the Night Chief Train Dispatcher position at Green Bay on the date of claim, which was also a rest day of Relief Position No. 3.

The service performed by Train Dispatcher Cigler and the claimant, Train Dispatcher Lesniak, during the period from December 1 through 15, was as outlined in Carrier's Exhibit A.

The claim has been denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 8, 1965 a one day temporary vacancy of the position of Assistant Chief Dispatcher occurred at Green Bay, Wisconsin. Claimant was regularly assigned as Train Dispatcher on the second trick with Tuesday and Wednesday rest days. (December 8, 1965 was Claimant's rest day.)

Carrier filled the position with Train Dispatcher Cigler who was regularly assigned to Relief Position No. 3 also with rest days of Tuesday and Wednesday.

It is uncontroverted that Mr. Cigler is junior in seniority to Claimant.

Petitioner asserts that Carrier violated the Agreement by not assigning Claimant to the work. Particular emphasis is placed on that portion of Rule 12 (c) which states: "In filling positions subject to this agreement, ability being sufficient seniority shall govern."

Carrier contends that the only rule applicable in this dispute is 14 (b) which provides:

> "Temporary vacancies of seven consecutive calendar days, or less, will be filled by extra train dispatchers in the order of their seniority, if qualified."

Since Claimant was not an extra Train Dispatcher, Carrier further contends, he cannot qualify under the rule.

The Board finds that Rule 14 (b) was not applicable in this dispute. Neither Claimant nor Mr. Cigler were extra Train Dispatchers; both were "assigned."

Under the circumstances, we find that Carrier violated the Agreement by not calling Claimant, the senior employe.

Claimant, however, is entitled only to the pro rata rate.

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.

AWARD

Claim is sustained consistent with the Opinion of this Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1968.

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