Award No. 16096
Docket No. TD-16702

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 currently effective Agreement between the parties, Rules 1 and 5(a) in particular, by its action in improperly filling a one-day vacancy in an assigned relief train dispatcher position in Carrier's Chicago, Illinois, train dispatching office on April 17, 1966.

(b) The Carrier be required to compensate Train Dispatcher E. J. Nurre one day's compensation at rate of Chief Train Dispatcher because of said violation.

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

For the Board's ready reference, Rules 1 and 5(a) of the Agreement, referred to in the foregoing Statement of Claim, are here quoted in full:

"SCOPE.

1. The term 'train dispatcher' as used in this agreement shall include all train dispatchers, excepting only one chief train dispatcher in each dispatching office, who will not be required to perform trick train dispatcher's duties.

The provisions of sections (a), (b), and (c), Rule 5 and Rule 6 of this agreement, will apply to chief train dispatchers."

"REST DAYS - WORK ON REST DAYS

5.(a) Each regularly assigned train dispatcher will be entitled and required to take two regularly assigned days off per week as

In the circumstances I am convinced that Mr. Frizzell, not Mr. Nurre, was entitled to the work on the date involved in the claim. In the circumstances the claim, not being supported by the provisions of the controlling agreement, the denial decision furnished Mr. Barlow with my letter of July 6, 1966 is reiterated."

Thereafter, under date of October 11, 1966, the General Chairman advised the Carrier that its decision was unacceptable. See Exhibit TD-3.

The claim having been handled in the usual manner up to and including Carrier's highest designated officer and having been declined by him this dispute is properly before this Board for adjudication.

All statements and data herein contained have been the subject of discussion and/or correspondence between the parties, or are known and available to the Carrier.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On Sunday, April 17, 1966, the chief train dispatcher, assigned to work from 7:30 A. M. to 3:30 P. M., was on his regularly assigned rest day. The relief train dispatcher who was assigned to fill the chief train dispatcher position on that day was off for personal reasons. The claimant, E. J. Nurre, was also a regularly assigned train dispatcher, and was on his rest day. There was no extra train dispatcher available. The regularly assigned chief train dispatcher was called to perform service on his rest day, on the position to which he was assigned, on the date of claim. The chief train dispatcher is senior to the claimant. Nevertheless, claim is submitted for a day's pay in behalf of the claimant, on the basis of the employes' contention that he should have been called to fill the chief train dispatcher's position on the date of claim.

The claim has been denied.

OPINION OF BOARD: The Chief Train Dispatcher whose position is exempt from the application of the rules of the Agreement save those identified in the second paragraph of Rule 1, that is, Rules 5 and 6, was on his rest day, Sunday, April 17, 1965. The regular relief dispatcher did not report for work that Sunday for personal reasons. The Chief Train Dispatcher was called to perform the service on his rest day.

E. J. Nurre, a regularly assigned Train Dispatcher, who also was on his rest day on April 17, claims that Carrier violated the Agreement, particularly Rules 1 and 5(a), when it failed to assign a Train Dispatcher to fill the vacancy. He contends that the position which was temporarily vacant on April 17 was that of an assigned relief Train Dispatcher, and therefore should have been filled by an employe subject to all the rules of the Agreement, rather than by the Chief Train Dispatcher who holds an excepted position and does not have a contractual right to exercise seniority in filling this temporary vacancy.

Carrier asserts that there was no extra Train Dispatcher available on the day in question and since the vacancy occurred on a Chief Train Dispatcher position, the regular incumbent of that position was properly called

to work on his rest day. It refers to Rule 5(a), which it asserts, contemplates that the regular assigned Chief Train Dispatcher work on his rest day.

Rule 5 states that the Chief Train Dispatcher is required to take two rest days per week. It also provides that he be paid time and one half when he works on his rest days. This provision which permits him to work on a rest day, does not change his status as the occupant of an excepted appointed position, with limited application of the Agreement, to an employe in which he has rights over another employe who is subject to the entire Agreement. The relief train dispatcher who regularly worked the position on the rest days was subject to the agreement. The extra train dispatcher, if there was one available would also be a train dispatcher subject to the Agreement. Since an extra train dispatcher was not available, Carrier should have called a train dispatcher who had seniority rights under the entire Agreement. The Chief Train Dispatcher, as the occupant of an appointed excepted position, can not exercise his accumulated seniority as a train dispatcher except as provided by Rule 19, whereas Mr. Nurre, the train dispatcher covered by the entire Agreement and eligible by seniority rights, was entitled to the position.

For these reasons we hold the Agreement was violated and claim is sustained.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1968.

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