

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19750
Docket Number TP19751

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(George P. Baker, Richard C. Bond, **Jervis Langdon, Jr.**,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

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

(a) The Penn Central Company, (hereinafter referred to as "the Carrier"), violated the currently effective Agreement dated June 1, 1960 between the Pennsylvania Railroad Company (predecessor to Penn Central) and the American Train Dispatchers Association, Regulation **2-B-1-(e)** of Part I thereof in particular, WHEN: after a temporary vacancy had continued to exist after the expiration of thirty (30) days (from July 15, 1970 to August 13, 1970); it failed to bulletin said position in accordance with Regulation 2-B-1 (a) as provided in **Regulation 2-B-1 (e)**.

(b) Because of said violation, Carrier shall now be required to compensate Claimant D. J. Harpster in the following manner:

1. In accordance with Regulation 4-B-1 (b) - eight (8) hours at pro rata rate for August 24, August 31, September 6 and September 7, 1970.

2. In accordance with Regulation 4-C-1 (a) - eight (8) hours at punitive rate for August 26, August 27, September 2, September 3, September 9 and September 10, 1970.

3. In accordance with Regulation 4-D-1 (a) - eight (8) hours at punitive rate for August 25, August 28, August 29, September 1, September 4, September 5, September 8, September 11, September 12, and September 13, 1970.

(c) Carrier shall now also be required to compensate Claimant W. L. Kiel in the following manner:

1. In accordance with Regulation 4-D-1 (a), payment for automobile expenses of .09 cents per mile for the 160 miles per day which he was required to travel from Altoona, Pennsylvania to Pittsburgh, Pennsylvania on September 3, September 4, September 5, September 6, September 7, September 10, September 11, September 12, September 13, September 14, September 17, September 18, September 19, September 20, and September 21, 1970.

2. In accordance with Regulation 4-D-1(a) eight (8) hours at punitive rate of pay for September 3, September 4, September 5, September 6, September 10, September 11, September 12, September 13, September 17, September 18, September 19 and September 20, 1970.

3. In accordance with Regulation 4-C-1 (a) eight (8) hours at punitive rate of pay for September 7, September 14, and September 21, 1970.

4. In accordance with Regulation 4-B-1 (b) eight (8) hours at pro rats rate of pay for September 9 and September 16, 1970.

OPINION OF BOARD: Carrier takes exception to the consolidation of the two claims in this matter into one case before this Board and argues that such handling is inconsistent with the intent of Section 3, First (i) of the Railway Labor Act and Circular No. 1 of this Board. We find no merit in this contention; consolidation of claims such as these should be encouraged since it permits more expeditious handling and avoids an unnecessary multiplicity of cases (Award 12424).

From August 24, 1970 through September 9, 1970 Claimant Harpster (at his request) was assigned as Train Dispatcher to a temporary vacancy on first trick in Altoona, Pa. with rest days on Sunday and Monday. On September 10 he returned to his regular position as Train Dispatcher on second trick, Section C, at **Altoona** with rest days of Monday and Tuesday.

The Third trick Train Dispatcher (D. F. **Hysong**) on Section C, Altoona (rest days Wednesday and Thursday) did not work his regular assignment starting July 15, 1970, because of other temporary assignments. Carrier failed to bulletin this vacancy until September 9, 1970.

Regulation 2-B-1 (e) of the Agreement reads:

"In the event that such temporary position or vacancy continues in **existence** after the expiration of thirty (30) days, it will be bulletined as provided in Regulation 2-B-1 (a)."

Claimant Harpster was the successful bidder and **was** awarded the position effective September 18, 1970. Part (a) of the claim, relating to the Carrier's failure to bulletin the position promptly, is conceded by Carrier. Part (b) of the claim alleges that Claimant Harpster is entitled to twenty day's pay for the period August 24, 1970 through September 13, 1970 on the basis that had Carrier bulletined the vacancy in timely fashion he would have been awarded and assigned the position during this **period**. Rates of pay **for second** and third trick Train Dispatchers were the same and Petitioner acknowledges that Claimant **Harpster's** earnings were actually greater during the claim period than they would have been had he worked the vacancy claimed.

The **Organization** argues that Claimant Harpster was required to work a trick and days other than those which would have been his under proper **assignment** since the Carrier failed to handle the matter under the applicable terms of the

Agreement. Without citing a specific regulation, petitioner asserts that the Claim is supported by the Agreement. It is further argued **that** when there is a contract violation there must be an adequate remedy. Although there have been Awards to the contrary, we hold that those Awards which find that the Board may not impose a penalty, unless expressly provided for in the Agreement, should be affirmed (Awards 10963, 6385, 14508, 14110, 13958 and others). In this case, however, the Agreement does include a rule which deals with monetary claims; Regulation 7-B-1 (a), in its last paragraph reads in part as follows:

"Any adjustment growing **out** of claims covered by this Regulation (7-B-1) shall not exceed in **amount** the difference between the amount actually paid to the claimant by the **Com-pany**, and the amount he would have been paid by the Company if he had been properly dealt with under this Agreement **....**"

This Board is not empowered to rewrite the Agreement. In view of the clear and unambiguous language of Regulation 7-B-1 quoted above and the reasoning with respect to penalties, we shall deny Part **(b)** of the claim.

Claimant **Kiel** was the incumbent Train Dispatcher on the third trick at Pittsburgh, Pennsylvania during the claim period. **His** claim (Part **(c)**) is based on a series of contentions: 1. The Carrier improperly failed to bulletin the third trick vacancy in **Altoona** in timely **fashion**; 2. Had the third trick vacancy been properly bulletined it would have **been** assigned to Claimant Harpster **effective** August 24, 1970; 3. This would have resulted in a temporary vacancy in Claimant **Harpster's** second trick position, which would have been bulletined and awarded to Claimant Kiel effective September 3, 1970.

Claimant **Harpster** did not in **fact** vacate his position until September 18, 1970, and hence there was no **requirement** to advertise the vacancy during the claim period. Petitioner's position with **respect** to Claimant Kiel is wholly speculative and not **supported** by the **Agreement**; Part **(c)** of the claim **must** be denied.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement **was violated.in** accordance with Opinion.

A W A R D

Paragraph (a) of the Claim is sustained.

Paragraphs **(b)** and **(c)** of the Claim are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *E. A. Killen*
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1973.