

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21823
Docket Number TD-21787

James F. **Scearce**, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Soo **Line** Railroad Company

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

(a) The **Soo** Line Railroad Company (hereinafter referred to as "the Carrier") violated the effective Agreement between the Carrier and its Train Dispatchers represented by the American Train Dispatchers Association, Rules 4 (a), 10 (a) and 10 (b) thereof in particular, when it failed to allow and/or require regularly assigned rest days to be observed **and** taken and when it refused to compensate Extra Train Dispatcher D. J. **Herzog** on November 29, 1974 **and** Extra Train Dispatcher R. E. Gabel on October 12 and November 30, 1974 for being deprived of extra train dispatching work.

(b) The Carrier shall **now** compensate the individual Claimants as set forth below:

- (1) Claimant D. J. **Herzog** eight (8) hours at the pro-rata or straight time rate of trick train dispatcher for November 29, 1974.
- (2) Claimant R. E. **Gabel** eight (8) hours at the pro-rata or straight time rate of trick train dispatcher on each of the applicable claim dates, namely October 12 and November 30, 1974.

OPINION OF BOARD: On October 12, 1974 (Saturday), November 29, 1974 (**Friday**) and November 30, 1974 (Saturday). the **Chief Train Dispatcher** at the Carrier's **Enderlin**, North Dakota; office was off work for vacation or other personal **reasons**. In his stead, the regularly assigned First Trick Dispatcher (J. O. Van **Dusen**) was permitted to move up and **render** relief. Van **Dusen's** regular days were Sunday **through** Thursday, inclusive; his assigned rest days were, thus, Friday and Saturday each week. Van Dusen was compensated at the pro rata rate for **the** position of Chief Train Dispatcher, at that time. (1)

(1) While Van Dusen is not a Claimant in this case at this point, he was originally, based on his demand for payment at the rate for his assigned rest days--the days he performed the duties of Chief Dispatcher cited on this case. That demand was eventually met. Nonetheless, his assignment to the Chief Dispatcher's position has relevance herein and will be discussed further.

The Claimants were extra **train** dispatchers assigned to the appropriate extra board for that office. Herzog was the senior extra train dispatcher and Gabel the next extra train dispatcher on the **Enderlin** train dispatching office extra board. There is no question as to **Herzog's** or **Gabel's** ability to fill the Chief Train Dispatcher position--both had **done** so in the past. It is equally unquestioned that the regular dispatcher who did fill the post was qualified to do so.

On the dates in question **the** Claimants' work statuses were as follows:

Herzog worked as extra **train** dispatcher on the third trick, beginning work at **12:01** a.m., for both October 12 and November 30; he stood for any extra work on November 29.

Gabel stood as next up for extra work on October 12 and November 30, owing to **Herzog's** already having been assigned as **above**.

The Union contends **that** the Carrier violated the Claimants' rights under the Agreement when it failed to assign them the duties of Chief **Train** Dispatcher as required under Rule 10 (a) and **(b)** of the Agreement on the days they were individually standing for the next work up: Herzog on **November** 29; Gabel on October 12 and November 30. Instead, the Union contends, the Carrier assigned such work to the regular dispatcher on his rest days without showing **such** assignment was due to an "unavoidable emergency" as permitted **under** Rule 4 of the Agreement.

Pertinent provisions of such rules are as follows:

Rule 4 - Rest Day

"(a) 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. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive **rest** days may be assigned **only** in instances where consecutive **rest** days would necessitate working any train dispatcher in excess of five (5) days per week...."

Rule 10 - Filling Positions -- Vacancies

"(a) Train dispatcher extra boards shall be established by management in each **train** dispatcher's office on the Soo Line Railroad Company. Train dispatchers who are not regularly assigned as train dispatchers **may** select the extra board of their choice by notifying the General Superintendent, in writing, with copy to the Division Superintendent, General Chairman and Office Chairman, American Train Dispatchers Association.

"After placing themselves **on** the extra board of their choice, train dispatchers shall be required to perform all extra work available to them in seniority order except when such service would cause a violation of the Hours of Service Law or prevented from performing such service by physical disability...."

"(b) Vacancies in existing positions and new positions of six (6) working days or less **duration shall be** considered extra work and performed by qualified extra dispatchers from the office extra boards **in** the order of their seniority.

"**An** extra dispatcher must complete one assignment of extra work before he is available for new assignment of extra work."

The Carrier contends that the position of Chief Train Dispatcher is an official one and, as such, is excepted from the provisions of the Agreement. The Carrier points to Rule 1 (a) as the **only** provision of the Agreement limiting its right to provide relief for Chief Train Dispatchers due to being absent **from** their positions, that restriction being that such work "**...will** be performed by train dispatchers from the office involved, qualified for such work." **Having** satisfied that provision, the Carrier contends, no other limitation can be effected.

Rule 1 - SCOPE - Paragraph (a) in its entirety reads as follows:

"(a) The term 'train dispatcher' as **herein** used shall include all **train** dispatchers except one chief **train** dispatcher in each dispatching office who is not regularly assigned to perform trick train dispatcher service; however, necessary relief of such chief train dispatchers

"because of absence from their positions, except where appointment of chief train dispatcher is made, will be performed by train dispatchers from the office involved, qualified for such work."

The Union further **contends** that the Carrier did not raise as a proper defense on the property that the position of Chief Train Dispatchers is not covered by the Agreement and thus **cannot** be introduced in its ex parte submission to the Board. **The** Union also claims that the **Carrier** is in error when it asserts that the position of Chief Train Dispatcher is an official one. It points to the Interstate **Commerce** Commission's Order of February 5, 1924, which it claims found that Chief Train Dispatchers are not officials, but **rather** subordinate officials and that the **Carrier** cannot violate the Commission's Order.

It is clear that the provisions of Rule 1 (a) are central to this matter and a reading of the record **indicates** the parties on the property recognized it as such. It was raised in Office **Chairman Rinowski's** October 22, 1974, letter to Superintendent **Kemmer** (Exhibit 3 of the Union; Exhibit C of the Carrier) and in subsequent communiques between the parties. This Rule is the crux of the Carrier's position; once it satisfies these provisions, the Carrier feels it has met its obligations under the Agreement.

Insofar as the Union's contention that the position of Chief Train Dispatcher is not an official one (pointing to **ICC** Order No. 72 as a basis for such a claim) a reading of that language does not support its position.

"Train dispatchers. This class shall include chief, assistant chief, trick, relief **and** extra dispatchers, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control **over** the movement of trains and related matters, **and** have substantially the authority of a superintendent with respect to those and other activities. This exception shall apply to not more **than** one chief dispatcher on any division."

While Order No. 72 delineated those classes of officials who **were** considered as "subordinate officials" and thus, ultimately subject to the **terms** of the Agreement between the parties, it did clearly establish exceptions. Nothing in the record disputed that the **instant** position of Chief Train Dispatcher was not **in** that excepted class of positions

as defined in the language of the Order. Awards on this Division affirm the Carrier's contention that the position of **Chief** Train Dispatcher is excepted from the **Agreement** (e.g. 18070, 9040, 4716). The Carrier is limited, however, **to** appointing such positions to qualified dispatchers "from the office involved." Van Dusen obviously met this requirement.

Given that the Carrier's obligation extended only to meeting the requirements set out in Rule 1 (a), then it follows that it **was** not required to adhere to the provisions of Rule 4 (a) insofar as "unavoidable emergencies" is concerned--this assignment being beyond the scope of the Agreement.

What the Carrier was required to do, and did **not**, in the first instance was to pay the occupant of the position at the appropriate rate for **the** days worked--in **this** case being the regularly scheduled rest days for Van Dusen. This discrepancy was eventually corrected, and thus Van Dusen was not a party to this claim.

The record does not support the Union's contention that the rights of the Claimants have been violated by the Carrier's assignment of the duties **of** Chief Train Dispatcher as was accomplished on the dates referenced herein.

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

The Agreement was not violated.

A W A R D

Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1977.