

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21912
Docket Number TD-21692

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: ((American Train Dispatchers Association
(Burlington Northern Inc.

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

(a) The Burlington Northern, (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, specifically Article 1(a) and Memo Agreement of January 20, 1971, when it failed and refused to compensate the below named Claimants the difference between compensation received on those dates and that claimed in accordance with the time claims as submitted. All claimed compensation is pro rata rate for difference between assistant chief dispatcher rate, which was actually paid, and pro rata rate for relief of excepted chief dispatcher, the service performed, except "*" denotes claim is for the same violation on a rest day of the Claimant where punitive compensation is due:

<u>Claimant</u>	<u>Compensation Claimed For Each Claim Date</u>	<u>Claim Dates (all multiple dates are inclusive)</u>
D. D. Drake	\$8.94	Sept. 2-6, 1974
	\$8.94	Sept. 9-13, 1974
	\$8.94	Sept. 16-20, 1974
	\$8.94	Sept. 23-27, 1974
	\$8.94	Sept. 30, 1974
	\$8.94	October 1-4, 1974
	\$13.41*	October 5-6-1974
	\$8.94	October 7-11, 1974
	\$8.94	October 14-18, 1974
	\$8.94	October 21-25, 1974
	\$8.94	October 28-29, 1974
	\$8.94	November 1, 1974
	\$8.94	November 4-7, 1974
	\$8.94	November 15, 1974
	\$8.94	November 18-22, 1974
	\$8.94	November 25-29, 1974
	\$8.94	December 2-6, 1974
	\$8.94	December 9-13, 1974
	\$8.94	December 16-20, 1974
	\$8.94	December 23-27, 1974
	\$8.94	December 30-31, 1974

<u>Claimant</u>	<u>Compensation Claimed For Each Claim Date</u>	<u>Claim Dates (all multiple dates are inclusive)</u>
D. D. Drake	\$8.94	February 3-7, 1975
	\$8.94	February 10-14, 1975
	\$8.94	February 17-21, 1975
	\$3.94	February 24-28, 1975
	\$8.94	March 3-7, 1975
	\$8.94	March 10-14, 1975
	\$3.94	March 17-21, 1975
	\$8.94	March 24-28, 1975
	\$3.94	March 31, 1975
	\$3.94	April 1-4, 1975
	\$8.94	April 7-11, 1975
	\$8.94	April 14-18, 1975
	\$8.94	April 21-25, 1975
	\$3.94	April 28-30, 1975
	\$8.94	May 1-2, 1975
	\$8.94	May 5-9, 1975
	\$8.94	May 12-16, 1975
	\$3.94	May 19-23, 1975
	\$8.94	May 26-30, 1975
M. D. Rutsen	\$8.94	September 1, 1974
	\$8.94	October 12-13, 1974
	\$8.94	October 19-20, 1974
	\$8.94	October 26-27, 1974
	\$8.94	November 2-3, 1974
	\$8.94	November 9-10, 1974
	\$8.94	November 23-24, 1974
	\$8.94	November 30, 1974
	\$8.94	December 1, 1974
	\$8.94	December 7-8, 1974
	\$8.94	February 1-2, 1975
	53.94	February 8-9, 1975
	\$8.94	February 15-16, 1975
	\$3.94	February 22-23, 1975
	\$3.94	March 1-2, 1975
	\$3.94	March 9, 1975
	\$8.94	March 15-16, 1975
	\$8.94	March 22-23, 1975

<u>Claimant</u>	<u>Compensation Claimed For Each Claim Date</u>	<u>Claim Dates (All multiple dates are inclusive)</u>
M. D. Rutsen	\$8.94 \$8.94	March 29-30, 1975 April j-6, 1975
W. M. Gutterud	\$8.94 \$8.94 \$8.94 \$8.94 \$8.94 \$8.94 \$8.94	September 7-8, 1974 September iii-15, 1974 September 21-22, 1974 September 28-29, 1974 March 1-2, 1975 March 8-9, 1975 March 23, 1975
J. W. Pogatshnik	\$8.94 \$8.94 \$3.94	December 14-15, 1974 December 21-22, 1974 December 28-29, 1974
A. G. Loney	\$8.94 \$8.94 \$8.94 \$8.94 \$8.94 \$8.94 \$8.94 \$8.94	April 12-13, 1975 April 19-20, 1975 April 26-27, 1975 May 3-4, 1975 May 10-11, 1975 May 17-18, 1975 May 24-25, 1975 May 31, 1975
D. W. Jackson	\$8.94	May 19-23, 1975

(b) Because of said violations, the Carrier shall. now be required to compensate each of the above named Claimants the amounts indicated for each claim date therein.

OPINION OF BOARD: The Chief Train Dispatcher at Grand Forks, North Dakota was promoted to Trainmaster effective September 1, 1974. Carrier contends that concurrently the supervision of the Grand Forks train dispatching office was assigned to the Chief Train Dispatcher at Minneapolis, Minnesota and the Grand Forks Chief Train Dispatcher position was abolished. Petitioner **does cot** agree and contends contrarily that the Chief position was not abolished, it was simply not filled. Further Petitioner alleges that an Assistant Chief Dispatcher position was established solely to provide relief for the Chief Train Dispatcher position et Grand Forks.

The provisions of Article I Section (a) and (b) of the applicable Agreement relate to this dispute; they provide:

"ARTICLE 1

(a) SCOPE.

This agreement shall govern the hours of service and working conditions of train dispatchers.

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 a shift performing train dispatchers' work.

NOTE: A weekly rest day shall be assigned to each excepted chief train dispatcher position as a part of the weekly schedule of work for any train dispatcher assignment.

Relief of excepted chief train dispatchers for their annual vacation, and other temporary periods of absence from their positions, shall be made by qualified train dispatchers from the office involved.

Any permanent appointment to the position of excepted chief train dispatcher shall be made from train dispatchers holding seniority as such, on the same seniority district.

(b) DEFINITION OF CHIEF AND ASSISTANT CHIEF
DISPATCHER POSITIONS.

Positions of chief and assistant chief train dispatchers shall include positions in which the duties of incumbents are to be responsible for time movement of trains on a Division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

It is noted that the Chief Train Dispatcher is a supervisory excepted position under Rule 1(a). Also, pertinent is the Memorandum Agreement dated January 20, 1971 which, *inter alia*, provided for a rate applicable to an employee relieving the Chief Train Dispatcher.

The crux of this dispute is whether or not the employees involved did indeed perform the duties of the Chief Train Dispatcher for the dates enumerated. Petitioner alleges that the work of former Chief Train Dispatcher remained at Grand Forks after his promotion and was performed by Claimants herein. The only proof submitted by Petitioner was the assertion that the rest day schedule of the former Chief Train Dispatcher remained after his departure, and the Minneapolis Chief Train Dispatcher never appeared at Grand Forks.

Carrier argues that the Petitioner has failed to establish a basis for the Claim herein with proof. Carrier argues that Claimants carried out their normal functions as Assistant Chief Dispatchers and were not relieving the Chief Dispatcher on the claim dates. Carrier stated that it had the right to determine the extent and location of supervision and in this instance assigned supervision of three dispatching offices (Minneapolis, Willmar and Grand Forks) to one Chief Train Dispatcher.

The record of this dispute reveals no evidence whatever to establish that the Claimant's duties on the dates enumerated encompassed the functions and responsibilities of the Chief Train Dispatcher. Notwithstanding the vigorous arguments advanced by the Organization, this dispute is strikingly similar to that dealt with by this Board in Award 14835. In that Award we said:

"It has been well established by this Board that the Carrier has the right to abolish positions if the need for them has been eliminated. It has been held that supervision need not be exercised at the actual site of operations. (Award 12310 (Wolf) and 12415 (Coburn)).

The Organization has not met the burden of proving that the grievant had in fact performed Foreman's functions. The mere relaying of instructions from an absent Foreman does not convert the conveyor of such instructions into a supervisor (Award 12350 (West)), nor does the keeping of work records of itself indicate the Claimant actually supervised the work of the other Water Service Mechanics (Award 13765 (Weston)).

Accordingly, we find that the Claim must be denied."

As in the Award cited above, there has been no evidence submitted by Petitioner to support its contentions in this dispute. Based on the entire record, therefore, this 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;

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

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.