

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26552
Docket Number TD-26519

Herbert L. Marx, Jr., Referee

(America" Train Dispatchers Association

PARTIES TO DISPUTE: (

(Duluth, **Missabe** and Iron Range Railway Company

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

(a) The Duluth **Missabe** and Iron Range Railway Company (hereinafter referred to as 'the Carrier'), violated the effective Agreement (effective December 1, 1972) between the parties, including but not limited to Rule 7 in particular when it failed to relieve Train Dispatcher **J. H. Oberbillig** on Tuesday, September 25, 1984.

(b) For the above violation, the Carrier shall now compensate Claimant Extra Train Dispatcher **S. J. Novak** one days' pay (eight hours) at the appropriate rest day or overtime rate for trick train dispatcher."

OPINION OF BOARD: Claimant **was** assigned to Relief Position No. 3. 0" four days each week, he relieved Trick Train Dispatchers. On the fifth day, Tuesday, he had "duties assigned by Chief Dispatcher." On Tuesday, September 24, 1984, Oberbillig reported off ill. carrier first attempted to call a" Extra Train Dispatcher to work in Oberbillig's absence, but he was assigned elsewhere. No further attempt was made to fill the position.

Claimant was a" Extra Train Dispatcher observing Tuesday as a **rest** day. The Organization argues that the Claimant should have bee" called to fill the vacancy caused by Oberbillig's absence, under Rule 7 which reads as follows:

"Combining or blanking positions for relief purposes shall not be permitted except as agreed to between the Superintendent and General Chairman. "

In general, the Carrier does not dispute the application of Rule 7. In this instance, however, the Carrier points out that Oberblllig was absent on a so-called "fill-in" date on which he did not replace another Train Dispatcher on a rest day. The Board does not find this sufficient to defeat the all-inclusive requirement of Rule 7. Presumably, Oberbillig was regularly assigned to duties as specified by the Carrier on the fifth day of his weekly assignment. Thus, the Board finds Rule 7 equally applicable on such a day.

This is confirmed to some degree by the fact that the record demonstrates that a" initial attempt was made to replace Oberbillig with a Train Dispatcher other than the Claimant.

The Carrier also points out that the filling of a vacancy for employees absent due to illness is not necessarily required under agreements with other crafts. The Carrier also notes that certain sick leave benefits are afforded to Train Dispatchers without being memorialized in an agreement. The Board finds that this circumstance does not, however, negate the provisions of Rule 7.

The conclusion reached by the Board follows that reached in Third Division Award No. 6750 under a virtually identical Rule. That Award states as follows:

"... Here it is conceded Carrier had made work on Gipson's position when it was established. It is our view that thereafter **the** work assigned to such position was a part of that regular assignment and the days thereof could no more be blanked than could days of other regularly assigned positions of different character...."

In support of its position, the Carrier refers to Third Division Award Nos. 25456 and 25883. These Awards, however, concern other circumstances in reference to a Chief Dispatcher position and are not directly relevant here.

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

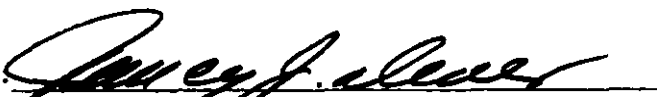
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.