

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

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

CLAIM #1 - CARRIER FILE 82-83-5

- (a) The Chicago and North Western Transportation Company ('Carrier') violated its Train Dispatchers' schedule working conditions Agreement, including Rule 5(e) thereof, when it combined
- (1) the 2nd shift Trick Train Dispatcher position on the East Desk (Job #016) with the 2nd shift Trick Train Dispatcher position on the South Desk (Job #010) in its Mason City, IA office on
- (a) Saturdays January 1, 8, 15, 22 and 29, 1983 and
- (b) Sundays January 2, 9, 16, 23 and 30, 1983 and
- (2) the 1st shift Trick Train Dispatcher position on the East Desk (Job #016) with the 1st shift Trick Train Dispatcher position on the South Desk (Job #009) on
- Sundays January 2, 9, 16, 23 and 30, 1983,
- to avoid using relief or extra train dispatchers to provide relief on the Saturdays and Sundays rest days for Job #016, and Sundays rest days for Job #009.
- (b) Because of said violations, the Carrier shall now compensate the following indicated Claimants one (1) day's pay at the rate applicable to Trick Train Dispatchers for each date opposite their respective names:

- (1)(a) B. J. Fredrickson Saturday January 1, 1983
J. E. Vaith Saturday January 8, 1983
D. L. Stowe Saturday January 15, 1983
B. T. Shipley Saturday January 22, 1983
M. E. Mahoney Saturday January 29, 1983
- (b) B. J. Fredrickson Sunday January 2, 1983
J. E. Vaith Sunday January 9, 1983
D. L. Stowe Sunday January 16, 1983
B. T. Shipley Sunday January 23, 1983
M. E. Mahoney Sunday January 30, 1983
- (2) W. L. Miller Sunday January 2, 1983
B. J. Fredrickson Sunday January 9, 1983
W. L. Miller Sunday January 16, 1983
C. S. Winship Sunday January 23, 1983
J. E. Vaith Sunday January 30, 1983

CLAIM #2 - CARRIER FILE 82-83-5

- (a) The Chicago and North Western Transportation Company ('Carrier') violated its Train Dispatchers' schedule working conditions Agreement, including Rule 5(e) thereof, when it combined
- (1) the 2nd shift Trick Train Dispatcher position on the East Desk (Job #016) with the 2nd shift Trick Train Dispatcher position on the South Desk (Job #010) in its Mason City, IA office on
- (a) Saturdays February 5, 12, 19, and 26, 1983, and
- (b) Sundays February 6, 13, 20, and 27, 1983, and
- (2) the 1st shift Trick Train Dispatcher position on the East Desk (Job #016) with the 1st shift Trick Train Dispatcher position on the South Desk (Job #009) on
- Sundays February 6, 13, 20, and 27, 1983,
- to avoid using relief or extra train dispatchers to provide relief on the Saturdays and Sundays rest days for Job #016, and Sundays rest days for Job #009.
- (b) Because of said violations, the Carrier shall now compensate the following indicated Claimants one (1) day's pay at the rate applicable to Trick Train Dispatchers for each date opposite their respective names:

- (1)(a) B. J. Fredrickson Saturday February 5, 1983
J. E. Vaith Saturday February 12, 1983
J. E. Vaith Saturday February 19, 1983
D. L. Stowe Saturday February 26, 1983
- (b) B. J. Fredrickson Sunday February 6, 1983
J. E. Vaith Sunday February 13, 1983
J. E. Vaith Sunday February 20, 1983
D. L. Stowe Sunday February 27, 1983
- (2) M. E. Mahoney Sunday February 6, 1983
C. S. Winship Sunday February 13, 1983
M. E. Mahoney Sunday February 20, 1983
B. J. Fredrickson Sunday February 27, 1983

CLAIM #3 - CARRIER FILE 82-83-6

- (a) The Chicago and North Western Transportation Company ('Carrier') violated its Train Dispatchers' schedule working conditions Agreement, including Rules 5(d) and 5(e) thereof, when it combined

- (1) the 2nd shift Trick Train Dispatcher position on the East Desk (Job #016) with the 2nd shift Trick Train Dispatcher position on the South Desk (Job #010) in its Mason City, IA office on

(a) Saturdays March 5, 12, 19, and 26, 1983 and

(b) Sundays March 6, 13, 20, and 27, 1983, and

- (2) the 1st shift Trick Train Dispatcher position on the East Desk (Job #015) with the 1st shift Trick Train Dispatcher position on the South Desk (Job #009) on

Sundays March 6, 13, 20, and 27, 1983

to avoid using relief or extra train dispatchers to provide relief on the Saturdays and Sundays rest days for Job #016, and Sundays rest days for Job #015.

- (b) Because of said violations, the Carrier shall now compensate the Claimants indicated below, one (1) day's pay at the rate applicable to Trick Train Dispatchers for each date opposite their respective names:

- (1)(a) M. E. Mahoney Saturday March 5, 1983
 B. J. Fredrickson Saturday March 12, 1983
 J. E. Vaith Saturday March 19, 1983
 D. L. Stowe Saturday March 26, 1983
- (b) M. E. Mahoney Sunday March 6, 1983
 B. J. Fredrickson Sunday March 13, 1983
 J. E. Vaith Sunday March 20, 1983
 D. L. Stowe Sunday March 27, 1983
- (2) D. L. Stowe Sunday March 6, 1983
 W. L. Miller Sunday March 13, 1983
 M. E. Mahoney Sunday March 20, 1983
 B. J. Fredrickson Sunday March 27, 1983

CLAIM #4 - CARRIER FILE 82-83-12

- (a) The Chicago and North Western Transportation Company ('Carrier') violated its Train Dispatchers' schedule working conditions Agreement, including Rules 5(d) and 5(e) thereof, when it combined

- (1) the 2nd shift Trick Train Dispatcher position on the East Desk (Job #016) with the 2nd shift Trick Train Dispatcher position on the South Desk (Job #010) in its Mason City, IA office on

(a) Saturdays June 4, 11, 18, and 25, 1983, and

(b) Sundays June 5, 12, 19 and 26, 1983 and

- (2) the 1st shift Trick Train Dispatcher position on the East Desk (Job #015) with the 1st shift Trick Train Dispatcher position on the South Desk (Job #009) on

Sundays June 5, 12, 19 and 26, 1983

to avoid using relief or extra train dispatchers to provide relief on the Saturdays and Sundays rest days for Job #016, and Sundays rest days for Job #015.

- (b) Because of said violations, the Carrier shall now compensate the Claimants indicated below, one (1) day's pay at the rate applicable to Trick Train Dispatchers for each date opposite their respective names:

- (1)(a) M. C. Burkart Saturday June 4, 1983
W. L. Miller Saturday June 11, 1983
W. L. Miller Saturday June 18, 1983
M. C. Burkart Saturday June 25, 1983
- (b) M. C. Burkart Sunday June 5, 1983
W. L. Miller Sunday June 12, 1983
W. L. Miller Sunday June 19, 1983
M. C. Burkart Sunday June 26, 1983
- (2) W. L. Miller Sunday June 5, 1983
W. L. Miller Sunday June 12, 1983
W. L. Miller Sunday June 19, 1983
W. L. Miller Sunday June 26, 1983

CLAIM #5 - CARRIER FILE 82-83-12

- (a) The Chicago and North Western Transportation Company ('Carrier') violated its Train Dispatchers' schedule working conditions Agreement, including Rules 5(d) and 5(e) thereof, when it combined
 - (1) the 2nd shift Trick Train Dispatcher position on the East Desk (Job #016) with the 2nd shift Trick Train Dispatcher position on the South Desk (Job #010) in its Mason City, IA office on
 - (a) Saturdays July 2, 9, 16, 23, and 30, 1983
 - (b) Sundays July 3, 10, 17, 24, and 31, 1983
 - (2) the 1st shift Trick Train Dispatcher position on the East Desk (Job #015) with the 1st shift Trick Train Dispatcher position on the South Desk (Job #009) on
 - Sundays July 3, 10, 17, 24 and 31, 1983
- to avoid using relief or extra train dispatchers to provide relief on the Saturdays and Sundays rest days for Job #016, and Sundays rest days for Job #015.
- (b) Because of said violations, the Carrier shall now compensate the Claimants indicated below, one (1) day's pay at the rate applicable to Trick Train Dispatchers for each date opposite their respective names:

(1)(a)	B. T. Shipley	Saturday	July 2, 1983
	B. T. Shipley	Saturday	July 9, 1983
	B. T. Shipley	Saturday	July 16, 1983
	W. L. Miller	Saturday	July 23, 1983
	W. L. Miller	Saturday	July 30, 1983
(b)	B. T. Shipley	Sunday	July 3, 1983
	B. T. Shipley	Sunday	July 10, 1983
	B. T. Shipley	Sunday	July 17, 1983
	W. L. Miller	Sunday	July 24, 1983
	W. L. Miller	Sunday	July 31, 1983
(2)	M. E. Mahoney	Sunday	July 3, 1983
	W. L. Miller	Sunday	July 10, 1983
	W. L. Miller	Sunday	July 17, 1983
	M. C. Burkart	Sunday	July 24, 1983
	M. C. Burkart	Sunday	July 31, 1983"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The various Claims all rest on the same fact scenario. These basic facts are not disputed. At its office in Mason City, Iowa, the Carrier maintains a dispatching office for its Central Division. Dispatching responsibility for a portion of this Division is assigned to the East Desk, which is covered by Job 015 on first shift and Job 016 on the second shift. A second portion of the Division is dispatched by the South Desk, covered by Job 009 on the first shift and Job 010 on the second shift. On Saturdays and Sundays, the dispatching responsibilities normally assumed by the East Desk have been assumed by the dispatcher on the South Desk.

In addition, the Mason City office employs at least one guaranteed assigned dispatcher who fills day-to-day and relief vacancies. A guaranteed assigned dispatcher is a position established by the May 27, 1976 Agreement. Such employees are considered to be the "senior extra train dispatchers," but are guaranteed a minimum of five days' pay for each workweek.

The Claims protest the combination of the East and South Desk on weekends and seeks compensation for one day's pay for each day. While the Parties disagree over the interpretation and application of Rule 5, they both agree it controls in one way or another this dispute. It is quoted below:

"RULE 5

(a)-REST DAYS-WORK ON REST DAYS
(Sections (a), (b) and (c) of this Rule 5
applies to Chief Train Dispatchers)

Each regularly assigned train dispatcher will be entitled and required to take two regular 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 days per week.

A regularly assigned train dispatcher who is required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

Extra train dispatchers who are required to work as train dispatcher in excess of five consecutive days shall be paid one and one-half times the basic straight-time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days.

(b) REST DAYS DURATION

The term 'rest days' as used in section (a) of this Rule 5 means that for a regularly assigned train dispatcher seventy-two hours, and for a regularly assigned relief train dispatcher (who performs five days' train dispatcher service) fifty-six hours, shall elapse between the time he is required to report on the day preceding his rest days and the time he is required to report on the day following his rest days. These definitions of the term 'rest days' will not apply in case of transfers due to train dispatchers exercising seniority.

NOTE: This rule 5(b) does not apply to Guaranteed Assigned Dispatchers or to 3 or 4 day assignments under Rule 2(c).

(c) ESTABLISHMENT AND CHANGE OF REST DAYS

Regularly assigned rest days for each position (including the relief dispatcher positions) will be established and no change therein will be made except as a result of increase or decrease in force or by agreement between the Division Manager and office chairman, such agreement to be approved by the officer in charge of Labor Relations and General Chairman.

(d) - RELIEF SERVICE

Where relief requirements regularly necessitate three or four days relief service per week, relief dispatchers will be employed and regularly assigned and compensated at rate applicable to position worked. When not engaged in dispatching service they will be assigned to such other service as may be directed by the proper supervisory officer and will be paid for such service at rate applicable to trick train dispatchers. Each train dispatcher's position as referred to in section (a) of this Rule 5, including chief train dispatchers' positions, will be considered a 'relief requirement', as referred to herein, except as otherwise agreed to between the officer in charge of Labor Relations and General Chairman, train dispatchers' committee.

Note: This Rule 5(d) will not be applicable in offices having a guaranteed assigned dispatcher position.

(e) - COMBINING POSITIONS FOR REST DAY RELIEF

The combining of positions to avoid using relief or extra train dispatchers to provide relief on rest days for established positions will not be permitted except by agreement between Division Manager and office chairman subject to approval of the officer in charge of Labor Relations and General Chairman."

The Parties' position can be summarized as follows. The Organization contends that the provisions of Rule 5(e) effectively bar the combining of territories, duties and responsibilities of positions to provide relief on rest days, except by specific agreement thereto. Since there was no agreement to combine the position, the Carrier, in their opinion, violated the Agreement. It is also their position that based on Rule 5(d) that each train dispatcher position must be filled 7 days per week.

The main thrust of the Carrier's argument relates to the relationship between Rules 5(d) and 5(e). They acknowledge that Rule 5(d) applies, Rule 5(e) requires that each position have its own relief. However they essentially argue that 5(d) doesn't apply in this case because of the "Note" under Rule 5(d). It says 5(d) will not apply to offices having a guaranteed assigned dispatcher position. The office in question has such a position. Thus they contend as Rule 5(d) does not apply at Mason City, the Carrier has no requirement to provide relief for any of the positions at that location, and cannot be found to have combined the positions for the purpose of avoiding the relief it was never required to furnish. They also rely on Award 25456 which they believe dispositive.

A number of ancillary issues must be dealt with. First the Carriers argue that the dispute handled on the property under Claim No. 3 (Carrier File 82-83-6) was based on the contention that the Carrier failed to separately fill the chief train dispatcher position in Mason City on the Saturday and Sunday rest days of said position. Therefore they argue it must be dismissed. This argument has no basis in fact since a review of the Claims on the property reveal no reference to the chief dispatcher position. The issue presented here is limited to the combination of trick dispatcher position. Second they argue Claims No. 3, 4, 5 do not assert a violation of Rule 5(e). Again the original Claims did assert such a violation as did the Notice of Intent to the Board. This is not a basis to dismiss the Claims or disregard Rule 5(e).

Also at the outset it should be stated that Third Division Award 25456 does not control this dispute. It is clearly distinguished based on its facts. It not only related to a chief dispatcher position, but it did not involve a combination of jobs as this case does. It involved a situation where the Carrier determined the Chief Dispatcher's job required only 5 days of activity and the job was "blanked" on Saturday and Sunday. The situation here is that activity occurs 7 days a week and job duties are being performed on the Claim dates.

The crux of this case revolves around the meaning, effect and intent of the "Note" to Rule 5(d). If in fact the Note to 5(d) didn't exist there wouldn't be any defense to the Claim. As noted the Carrier acknowledges that where Rule 5(d) applies, Rule 5(e) requires each position to have its own relief. However they contend the "Note" to Rule 5(d) and the fact there is a guaranteed assigned dispatcher eliminates the applicability of 5(d) and hence 5(e). Accordingly the critical question is whether the Note to 5(d) was meant, where it applies, to eliminate directly or indirectly the prohibition against combining positions to avoid relief on rest days.

It is the conclusion of the Board that the Note to 5(d) was not intended to in any way nor is it reasonable to conclude that it modifies the requirements of Rule 5(e).

The purpose of Rule 5(d) is obviously to require that a regularly relief position be established when "relief requirements" necessitate 3 or 4 days of relief service. In other words a regular 5 day a week relief position with regular and consecutive rest days would be established and if less than 5 days but more than 3 days work was available other duties would be assigned at the dispatcher rate. This was an alternative to using extra dispatchers on a continual basis.

In fact there is no functional or logical connection between the Note to Rule 5(d) and the prohibition in Rule 5(e) against combining positions to avoid providing relief on rest days for established positions.

The Agreement which established guaranteed assigned dispatchers had nothing to do with the subject of combining positions to provide relief.

It is apparent that the Carrier's interpretation is much too literal and tortures too much the otherwise clear dictates of Rule 5(e). If an established trick dispatcher position has duties to be performed on its rest day, relief must be provided and it cannot be so provided in the form of a combined job without the express agreement of the Organization.

It is noteworthy that the Carrier was put on notice at the time these Rules were negotiated that, in the Organization's opinion, that the Parties didn't intend the Note to Rule 5(d) to swallow all of Rule 5, which would include 5(e). In a June 22, 1976 letter to the Carrier concerning the construction of a consolidated Agreement the Organization stated:

"Rule 2(c) has a Note reading:

'This Rule 2(c) will not be applicable in offices having a guaranteed assigned dispatcher position.'

It is our position that this Note should follow Rule 5(d) substituting 'Rule 5(d)' for 'Rule 2(c)'.

As it is written in the draft, narrow construction of the Note would abolish regular positions when a position of guaranteed assigned dispatcher was established. This was certainly not the intent of either party. The intent was to remove the requirement of a regular position being established with a particular utility day

or days and regular rest days when a position of guaranteed assigned dispatcher is established. This allows substitution of a guaranteed assigned dispatcher position for the position required under Rule 5(d) with the resultant increase in flexibility of use of the dispatcher protecting these days."

Notably the Carrier took no particular exception to this. Thus it is proper to not only reject the Carrier's narrow construction but to accept that the intent of the Note is limited to giving the Carrier additional flexibility in providing relief service and was not intended to eliminate the requirement for relief service. The intent was plainly to state that where a guaranteed assigned dispatcher existed that relief need not be performed by, and according to the Rules applicable to, a regular relief position. Accordingly, the Note to 5(d) cannot extend to the prohibition against combining positions. The Note to 5(d) only reacts with the requirement of providing relief in the form of regular relief assignments or in the form of guaranteed assigned dispatchers. It did not affect the substance of the Rule, to wit, that relief is required when duties exist. Nor did it affect Rule 5(e) that where relief is required it can't be provided by combining positions.

In conclusion, while we agree with the basic position of the Organization, we also agree with the Carrier that the proper Claimant would be the senior available extra train dispatcher. Therefore the Carrier and Organization are directed to research records and make the proper Claimants whole on each claim date.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.