

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29344
Docket No. TD-29414
92-3-90-3-336

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"#1 - CLAIM OF G. T. NISZCZAK - CARRIER SYSTEM DOCKET TD-11

Claim 8 hrs pay at time and one half
For the following days acc. Jr Trn
Dispatcher D. H. Wheat diverted off Regular
Job to work these days at time and one half
Jan 22 and 23, Jan 29 and 30, Feb 5 and 6
Feb 12 and 13, Feb 19.
Violation of Rule 5, Section 2, Paragraph E, Item 1

#2 - CLAIM OF G. T. NISZCZAK - CARRIER SYSTEM DOCKET TD-12

Claim 8 hours pay at Time and
one half for March 19th and 20th
acc. Jr. Train Dispatcher D. H. Wheat
diverted off Regular position to
work my Scheduled Rest Days
at Time and one half

#3 - CLAIM OF J. B. KUCZEK - CARRIER SYSTEM DOCKET TD-13

Time claims for Tues., January 17th, Wed.,
January 18th, Tues. January 24th Wed. January
25th, Tues. January 31st, Wed. February 1st,
Tues. February 7th, Wed. February 8th, and
Tues. February 14th, Wed February 15th,
Tues. February 21st, 28th, March 7th.
Total 12 days acct rest days and not called to
work. D. Wheat worked for overtime violation
Rule 5 Sect 2 par. 1"

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.

As part of the closure of its Toledo, Ohio, train dispatching office, and the consolidation of work into the Dearborn, Michigan, office, Carrier bulletined Relief #5 to relieve the Detroit (Toledo) North Train Dispatchers. This position was awarded to N. A. Feldman, who was previously assigned to the first trick Toledo East Train Dispatcher position. Feldman was, however, retained on his previous assignment because the successful bidder for that vacancy was not yet qualified. This required the Carrier to fill Relief #5 until Feldman would be released. Carrier did so by directing D. H. Wheat, who had been awarded the position of North/South Assistant Chief Dispatcher at Dearborn, to perform the relief work. In accordance with Rule 12 of the Agreement, Wheat was paid at the overtime rate. The Organization contends Claimants, who were regularly assigned to the positions which were relieved, should have been used on their rest days.

The Organization relies upon Rule 5, Section 2 (a) and (e) of the Agreement, which read, in pertinent part, as follows:

"Section 2. - Extra Work

(a) Extra work shall consist of the following:

1. Relief requirements of less than five (5) days' work per week except as provided in Section 1, paragraph (b) of this rule.
2. Vacancies and positions not filled in accordance with Rule 4.

* * *

(e) Where, in the performance of extra work, no extra employees are available who can be used at the straight time rate of pay and it therefore becomes necessary to assign an employee who must be paid at the overtime rate, assignment will be made in accordance with the following order:

1. Available incumbent on his rest days."

Carrier first denies Rule 5 is applicable, asserting Wheat was not performing extra work, but, rather, work of a regular position which was advertised and awarded under Rule 4 of the Agreement. Secondly, Carrier argues Wheat was used in accordance with Rule 12, which reads, in part, as follows:

"RULE 12 - SERVICE OTHER THAN REGULAR ASSIGNMENT

(a) A regular assigned train dispatcher required by the Company to perform service or work temporarily at other than his regular position shall be reimbursed for any actual and necessary expenses incurred due to such change. If such temporary assignment pays a higher rate than his regular position, the higher rate will be allowed.

(b) A regular assigned train dispatcher required to temporarily fill a position covered by this Agreement on a trick other than the trick to which he is regularly assigned shall be compensated at the overtime rate of the position so filled. . . ."

Because the work performed by Wheat was on tricks other than those to which he was assigned, he was compensated at the overtime rate on each date of claim.

Carrier's reliance upon Rule 12 is misplaced. The Rule governs compensation for employees working on assignments other than their own. The Rule does not establish the circumstances whereby Carrier is privileged to move such employees to other positions, nor does it establish the manner for filling vacancies.

We do not agree with Carrier that Rule 5 does not apply. This was a vacancy that was not filled in accordance with Rule 4. Although Feldman was awarded the position of Relief #5 pursuant to Rule 4, there was a vacancy created by Feldman not being allowed to take up service on that position. Wheat was not placed on Relief #5 pursuant to Rule 4. Other than Rule 12, Carrier has offered no other support for moving Wheat to that position.

Carrier does not deny Wheat worked each day of claim at the overtime rate. Therefore, Section 2 (e) of Rule 5 applies, and Claimants should have been used as the incumbents on their rest days. Claimants are entitled to eight hours' pay for each date of claim, but at the straight time rate.

A W A R D

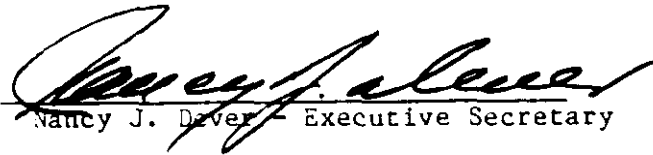
Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.