

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31766
Docket No. TD-31557
96-3-93-3-546

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(American Train Dispatchers Department/Brotherhood of
(Locomotive Engineers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Please accept this claim on my behalf, G. T. Mannix train dispatcher Selkirk, for eight hours pay at time and a half at the ACTD rate for Friday 1/24/92 account spare person, B. Carl, was not used to cover the first vacancy 3A desk starting at 1100PM which was in turn covered at time and a half by the incumbent but rather was used to cover a later vacancy 3B-ACTD starting at 1130PM bypassing the incumbent; me, on my day off. A Spare is to cover the first opening for which they are rested and qualified, This was not followed."

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 employee 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 were given due notice of hearing thereon.

There is no dispute on the facts underlying the claim. Two third shift vacancies existed in Carrier's Selkirk, New York, dispatch office on January 24, 1992. There was only one Guaranteed Assigned Dispatcher ("GAD") who was senior, qualified and available to fill either vacancy at straight time pay rates. If no GAD is available at straight time, Rule 5 Section 2(e)(1) requires that the available incumbent on his rest days be called.

The desk 3A vacancy had hours from 11:00 P.M. to 7:00 A.M. The desk 3B-ACTD vacancy hours were 11:30 P.M. to 7:30 P.M. Mr. Ingraham was the incumbent on desk 3A. Claimant was the incumbent on desk 3B. The claim date was a rest day for both Ingraham and Claimant. Ingraham was the senior employee of the two.

The Carrier used the GAD to fill the 3B vacancy at straight time rates. Ingraham, as the incumbent on rest days, was called to fill the 3A vacancy at the overtime rate.

If the Carrier had used the GAD to fill the 3A vacancy instead, then Claimant, as the incumbent on rest days, would have been called for the 3B vacancy. He would have received the overtime pay instead of Ingraham. As a result of the Carrier's method, however, the more senior employee received the overtime pay.

The Organization contends that the Carrier violated Rule 5 as well as the provisions of a March 7, 1985 GAD Agreement when it filled the 3B vacancy, first, before it filled the 3A vacancy. It says the Carrier was required to fill the two vacancies in chronological order of starting times. The Carrier argues there is no contractual requirement to fill two or more vacancies in chronological order. The record contains no evidence of past practice.

We have thoroughly reviewed the text of Rule 5 and the March 7, 1985 GAD Agreement cited by the Organization. Neither contains an explicit requirement to fill multiple vacancies on the same shift in any particular order. On this record, therefore, we must conclude that the Carrier did not violate the Agreement as alleged.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of October 1996.