

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33027
Docket No. TD-32977
99-3-96-3-363

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

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

“(a) The Carrier has failed to maintain an adequate number of qualified employees to fulfill the requirements of service. On Sept. 13, 1995, the Carrier violated the effective Schedule Agreement including, but not limited to, Article 3 (e) and 4 (f) when it failed to separately fill the West Belt and the Merchants position on the 2nd shift (3pm-11pm). Instead, without agreement to do so the Carrier combined these positions to prevent providing relief as required by the Agreement.

(b) Due to such violation, the Carrier shall now compensate R. W. Filges six (6) hours pay at the overtime rate applicable to the Merchants position as provided for in Article 2 (d) of the Agreement.”

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.

As background, the Carrier has two Train Dispatcher positions on second shift (3:00 P.M. to 11:00 P.M.) the West Belt and Merchants. On September 13, 1995, the Merchants Train Dispatcher was removed from service at 5:00 P.M. pending a disciplinary investigation. Evidence of record from the West Belt Dispatcher is that the territories were combined and the remaining six hours of the second shift Merchants Dispatcher position was reassigned by computer to the West Belt position.

The Organization argues that the Carrier violated the Agreement when it combined the two positions. The combining effectively blanked the 2nd shift Merchants Dispatcher position without any agreement to do so. The Organization maintains that in particular, Article 3(e) and 4(f) were violated, wherein Article 3(e) holds that:

"Each dispatcher's position shall be considered a 'relief requirement' as referred to herein. Any exception must be by Agreement between management and the General Chairman."

Since no Agreement existed each position had to be filled separately and could not be combined as the Carrier did in this instance. The Organization argues that the Carrier violated Article 4(f) in that:

"... when an extra dispatcher is needed, the senior extra train dispatcher who is not performing train dispatcher service, and who can be called and used without violating the Hours of Service Law, shall be called and required to perform the service. . . ."

In that the Claimant was available and the position should not have been combined, the Carrier violated the Agreement in not calling the Claimant to fill the remainder of the vacant position. Additionally, the Organization maintains Carrier violation of Article 5(e) in that no emergency existed and that pay for such violation should be forthcoming under Article 2(d) for service during unassigned hours.

The Carrier argues that no violation occurred as the position went blank due to an emergency situation in the middle of the shift. The emergency required the Merchants Dispatcher to be pulled from service. It further argued that the Claimant

had worked his regular position and could not fill the blanked position due to the Hours of Service. The Carrier denies the applicability of Articles 3(e) and 4(f) stating:

“Article 3(e) (Relief Service) Not relevant. The blanking of the subject shift was unexpected and for only six (6) hours. This Rule contemplates regular relief assignments of four (4) or more days’ relief service per week and is about establishing regular relief assignments to cover same.”

“Article 4(f) (extra work) Not relevant. This Rule Contemplates extra work for the extra Dispatchers and Claimant was a regularly assigned Train Dispatcher and worked his regular position.”

The Carrier further disputes the applicability of other Articles alleged to have been violated. It argues that Article 5(e) which discusses emergency conditions “contemplates a permanent reduction in force,” not the situation at hand, and states in part “not less than five (5) calendar days’ advance notice of the abolishment of a regular position shall be given in writing to the general Chairman. . . .” The Carrier denies applicability as Article 5(e) refers to a permanent reduction and:

“It has nothing to do with a situation where a regular Train Dispatcher is relieved of his duties during his shift for gross negligence and the remaining Dispatcher on duty fills in on a need-basis until the next shift, as involved in this instant case.”

The Carrier denies any payment due under article 2(d) which is “not relevant as Claimant was not required to perform any service” during unassigned hours.

The Carrier asserts that all Articles alleged to be violated are inapplicable. The Carrier maintains it has no provision restricting it in the manner disputed. It is the Carrier’s position that it did not violate the Agreement, in that it is not obligated to fill the position when it is not permanent, but partial. Lastly, the Carrier maintains that there is no showing that the West Belt Dispatcher did any work of the Merchants Train Dispatching position on the claim date.

The Board has studied the factual situation and the Agreement Articles in dispute. Article 3 constitutes a negotiated provision which has three interrelated paragraphs. Only paragraph one contemplates as the Carrier argues the establishing

of regular relief assignments. Paragraph two distinguishes relief Dispatchers from extra Dispatchers and the penultimate paragraph applicable herein is that presented by the Organization, that each Dispatcher's position "shall be considered a 'relief requirement'" unless agreed to by the parties. Accordingly, as there is no dispute that this claim involved two separate positions, they each constituted a relief requirement.

Article 4(f) therefore was applicable and an extra Train Dispatcher was to be called. Although the Carrier argues initially that Claimant could not fill the position due to Hours of Service, the highest officer rejected due to the fact that the Claimant was not an extra Dispatcher, but regularly assigned and had worked his regular position. Under Article 4(f) if the Claimant was the senior extra Train Dispatcher not performing service and could be called without violating Hours of Service, he should have been called if an extra Dispatcher was "needed" for the six hours remaining.

Further, Article 5(e) has no relevance as the language applies to a "reduction in force" which upon study was not negotiated, contemplated or created for applicability to the instant circumstances. In this dispute, the Board sustains the first part of the claim in that the Carrier violated Article 3(e) and 4(f) in combining positions. As for the second part of the claim there is no showing that in blanking the position any work was performed. The Organization has the burden of proving all elements of the claim and all that exists in this record for proof is that "Mr. Rick Gatner reassigned territories on the computer." The Carrier stated without rebuttal that "there is no showing that the remaining Train Dispatcher performed any duties of the blanked position." Claimant should have been called if the partial blanking due to removal for "gross negligence" required that "an extra dispatcher [was] needed." We find no Rule obligating the Carrier to fill a partial position under unexpected circumstances where no extra Dispatcher was shown to be needed, as no actual service was performed. Lacking proof thereof, the second part of the claim must be denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of January 1999.