

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO AND NORTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: I Claim of the American Train Dispatchers Association that the Chicago & North Western Railway Company failed to properly apply Rules 5 (d) and 14 (b) of the Train Dispatchers' Agreement effective June 1, 1937 when it failed

- A. To assign Extra Disatcher C. P. Thomson, Chadron, Nebraska office, to effect relief service on April 13, 14, 15, 16, 17, 19, 24, 26, 27, 28, 29 and 30, 1944, and on May 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24 and 25, 1944, caused by the absence of the regular relief dispatcher, in compliance with Rule 5 (d) and
- B. Failed to fill this temporary vacancy in compliance with Rule 14 (b).

II Extra Train Dispatcher C. P. Thompson shall now be paid the difference between telegrapher's rate, which he was paid, and dispatcher's rate for service performed on the dates mentioned in Item A, in the amount of \$142.89, as specified in Rule 5 (d); also that he now be credited with 33 days' vacation credits for the year 1944 because of Carrier's failure to fill this temporary vacancy as specified in Rule 14 (b).

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Chicago and North Western Railway Company and the American Train Dispatchers' Association governing the hours of service, working conditions and rates of pay of Train Dispatchers, effective June 1, 1937.

Rule 5 (d) of this Agreement reads as follows:

"Where relief requirements regularly necessitate four or more days relief service per week, relief dispatchers will be employed and regularly assigned and compensated at rate applicable to the 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 dispatcher. . . . It is understood that relief dispatchers may perform relief service in more than one office on same seniority district, and that each train dispatcher's position as referred to in section (a), 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 personnel and general chairman, train dispatchers' committee. Relief requirements of less than four days a week will be performed by extra dispatchers who will be paid at rate applicable to positions worked."

fill the relief position and requiring regular train dispatchers to work on their assigned rest days during Pope's absence account illness.

The Carrier reiterates its position that the claim as submitted to the Board has not in its entirety previously been handled on the property and is therefore not properly before the Board. Further, that the claim is not supported by the provisions of agreement rules applicable and on basis of the facts and evidence as herein presented, the Board cannot consistently do otherwise than deny claim of employes.

OPINION OF BOARD: Claimant Thompson was a train dispatcher on the seniority roster of the Chadron office of the Carrier. When Pope, the regularly assigned relief dispatcher at Chadron became ill, a temporary vacancy existed within the meaning of Rule 14 (b). Under this rule, the senior qualified train dispatcher on this seniority district making application was entitled to the work. Consequently, Thompson, the holder of senior rights to the work, was entitled to the work in question from and after May 16, 1944, the date the record shows that he applied for it, as the rule requires.

The Carrier's contention that an unavoidable emergency existed because of its inability to provide a relief telegrapher for Thompson at Rapid City is without merit. This is not an unavoidable emergency within the contemplation of the rule. A party cannot ordinarily assert his own negligence or want of foresight as an unavoidable emergency. If he could, it would be the means of affording him relief from his own contract violations.

The claim for credit towards vacation allowance is properly before this Division for consideration even though not specifically mentioned in the claim considered on the property. It is a part of the compensation paid to employes and is therefore incident to service rendered. It is not contemplated, however, that vacation credits shall be allowed for other than service actually rendered. Penalty payments for days not actually worked do not require the allowance of vacation credits.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 Carrier (1) failed to assign extra dispatcher Thompson to the Chadron, Nebraska, office on May 17, 1944, to fill a temporary vacancy in accordance with Rule 14 (b); and (2) the Claimant shall be paid the difference between telegrapher's rate and dispatcher's rate for service performed on May 17, 18, 19, 20, 21, 22, 24, and 25, 1944. No vacation credits are allowed.

AWARD

Claim sustained as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of June, 1945.