

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) The Gulf, Colorado and Santa Fe Railway Company, hereinafter referred to as "the Carrier," violated the currently effective Agreement between the parties to this dispute, including Article II, Sections 10-b and 14, when on Sunday, July 18, 1954, it failed to use senior unassigned Train Dispatcher J. W. Fewell to fill a vacancy in the Assistant Chief Dispatcher position beginning at 9:00 P. M., Sunday, July 18, 1954. Instead, Carrier filled this vacancy with Mr. R. M. Bethune, an unassigned train dispatcher junior to Dispatcher J. W. Fewell and then used unassigned Train Dispatcher J. W. Fewell to fill a trick train dispatcher vacancy beginning at 11:00 P. M., Sunday, July 18, 1954.

(b) Carrier shall now compensate unassigned Train Dispatcher J. W. Fewell the difference between what he was paid and what he would have been paid had he been used to fill the vacancy in the Assistant Chief Dispatcher position beginning at 9:00 P. M., instead of filling the vacancy in the trick dispatcher position beginning at 11:00 P. M., Sunday, July 18, 1954.

EMPLOYEES' STATEMENT OF FACTS: On Sunday, July 18, 1954, two unassigned, qualified train dispatchers were available, in Carrier's Galveston, Texas office, to perform train dispatcher service, namely, Mr. J. W. Fewell and R. M. Bethune. Mr. Fewell was the senior of the two dispatchers.

On Sunday, July 18, 1954, two vacancies occurred in Carrier's Galveston, Texas office. The first vacancy occurred in the Assistant Chief Dispatcher position beginning at 9:00 P. M. The second vacancy occurred in a trick dispatcher position beginning at 11:00 P. M.

Carrier used the junior unassigned train dispatcher, Mr. R. M. Bethune, to fill the first or 9:00 P. M. vacancy and used the senior unassigned train dispatcher, Mr. J. W. Fewell, to fill the second or 11:00 P. M. vacancy.

(3) Where a practice is widespread and well established the only reasonable inference is that both parties have acquiesced in the practice. See Award No. 6607.

The Carrier has also presented evidence that its practice under the agreement rules relied upon by the Employees has been widespread and well established.

In conclusion, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without support under the governing agreement rules in effect between the parties hereto and should, for the reasons previously expressed herein, be denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits Not Reproduced.)

OPINION OF BOARD: Our Award 8812 of this date, announced herewith, is determinative of the claim in the instant case as it involves the same parties and same rules.

The claim is therefore denied.

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:

The the Carrier and the Employee involved in this dispute are respectively carrier and employee 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1959.