# Award No. 8823
# Docket No. TD-7865

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Carroll R. Daugherty, Referee**

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## PARTIES TO DISPUTE:

## AMERICAN TRAIN DISPATCHERS ASSOCIATION

## THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

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

(a) The Atchison, Topeka 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 Tuesday, September 7, 1954, it denied unassigned Train Dispatcher R. T. Polley his right to perform dispatcher service on third trick train dispatcher position, a position for which he was qualified, available and willing to perform service.

(b) Carrier shall now compensate unassigned Train Dispatcher R. T. Polley a day's pay at pro rata rate for Tuesday, September 7, 1954, a day that he was deprived of train dispatcher work to which he was contractually entitled under the rules of the Agreement, but which instead was performed by a junior unassigned train dispatcher.

**EMPLOYES' STATEMENT OF FACTS:** Unassigned Train Dispatcher R. T. Polley performed dispatcher service Saturday, September 4, 1954, through Monday, September 6, 1954—three (3) consecutive days. On Tuesday, September 7, 1954, a vacancy occurred on a third trick position. Unassigned Train Dispatcher R. T. Polley was qualified and available to fill that vacancy which, if he had been permitted to fill, would have constituted four (4) consecutive days' train dispatcher service. Instead, Carrier filled that third trick vacancy with an unassigned train dispatcher junior to Dispatcher Polley.

There exists an Agreement between the parties to this dispute effective September 1, 1949, on file with your Honorable Board, and by this reference is made a part of this submission as though it were fully set out herein.

(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 Employes has been widespread and well established.

In conclusion, the Carrier respectfully reasserts that the Employes' 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 Employes or their representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant, a train dispatcher, not regularly assigned, at Carrier's train dispatching office in Newton, Kansas, having completed the protection of a temporary vacancy on Position No. 330 as of September 4, 1954, displaced junior train dispatcher Flottman, also not regularly assigned, on Rest Day Relief Position No. 354 as of Sunday, September 5, 1954. Position No. 354 at that time constituted a temporary vacancy of more than seven days. Its work week was Thursday—Monday, with rest days Tuesday and Wednesday. Claimant worked Position No. 354 on Sunday and Monday, September 5 and 6, 1954.

Regular train dispatcher Position No. 340 at said office had Mondays and Tuesdays as rest days; and of these, the Tuesday on said position was not part of any regular relief position. The work of Position No. 340 on Tuesday, September 7, 1954, was performed by the above-mentioned train dispatcher Flottman.

Claimant and his representatives contend that, since claimant was not working on September 7, 1954, one of the rest days of Position No. 354, he should have been the one to work the above-mentioned Tuesday of Position No. 340.

Claimant worked on Position No. 354 from September 5, 1954, to and including September 13, 1954, excluding the rest days thereon.

The opposing contentions of the Parties will not be detailed here. No procedural questions are raised. It is enough to say the following: (1) The Employes argue that (a) unassigned train dispatchers are entitled to perform five consecutive days of service, if and when available, such service to be on a day-to-day basis, with temporary vacancies to be awarded in the order in which they occur; and (b) in the instant case Tuesday, September 7, 1954, constituted a temporary vacancy of less than eight days on Position No. 7, which claimant should have filled under Article II, Section 10-b. (2) Carrier argues the opposite, trying to buttress its position by (a) arguing that the work on said position on said date was tag-end relief work covered by Article IV, Section 7; and (b) showing that past practice on the property was in line with its interpretation of the Agreement.

In deciding the instant altercation the approach of the Board will be to examine the various provisions of the Parties' Agreement and, if possible, interpret the relevant ones in such a way as to make them harmonious,

sistent, and constructive rather than conflicting and destructive. In short, the Board here tries to apply the "four-corners" principle.

The first point that has to be decided is whether as of claim date Claimant was an "assigned" or "unassigned" train dispatcher at Newton, Kansas. The Board finds that, in the sense of the language found in Articles II and IV of the Agreement, he was "unassigned." It is clear from reading these Articles that under the Agreement there are two main classes of train dispatchers on Carrier's property—"regularly assigned," and "unassigned." It appears also that there are two kinds of regularly assigned dispatchers—those on regular trick positions and those on regular relief positions (see Article IV, Section 1-a, and Section 6). It appears further that the terms "unassigned" and "extra" are synonymous in respect to train dispatchers who are not regularly assigned (see Article IV, Section 1-a and 1-b, wherein the limitation of five consecutive days of work is applied to employes under each term). Claimant was not, as of claim date, a regularly assigned train dispatcher. He was an extra or unassigned dispatcher filling or working on a temporarily vacant position, one of whose rest days fell on Tuesday, September 7, 1954, and the duration of which vacancy was more than seven days.

But wasn't claimant "assigned" by Carrier to said vacancy? How could he be called "unassigned"? In the first place, he "bumped" into the vacancy; from that standpoint it is to be doubted that he could be called "assigned." Certainly Carrier in a sense "assigned" him by having him on the vacancy as required by the Agreement. If "assigned" means working on any position under any circumstances, claimant was of course assigned. But if "extra" and "unassigned" are synonymous, as found above, then, because claimant was an extra rather than a regularly assigned dispatcher, he was "unassigned" in the sense of the language found in the Agreement.

If this is true, and the Board has so found, the next question is, which Rule or Rules apply to the instant claim—Section 10-b of Article II, as the Employes contend; or Section 7 of Article IV, as Carrier avers. The answer to this question hangs on whether the "vacant" rest day of regular T. D. Position No. 340 is to be considered a temporary vacancy of less than seven days, as the Employes argue, or a regular relief requirement of less than four days per week, as contended by Carrier.

The record establishes that Tuesday, September 7, 1954, was a regularly recurring unfilled or "tag-end" relief vacancy. Therefore it was not just an **ordinary** vacancy of fewer than seven days. If it had been an ordinary vacancy of fewer than seven days, Article II, Section 10-b, would have been applicable and controlling. But because it was a special, tag-end-relief-day vacancy, Article IV, Section 7, must be held the controlling provision. Specific contract provisions outrank general ones.

So the latter section must be examined—but always with the understanding that its language must, if possible, be harmonized with the language of other, related sections of the Agreement.

Said language states that a **regular** relief requirement of less than four days per week **will** be protected by the senior unassigned train dispatcher. The tag-end Tuesday rest day of Position No. 340 was a regularly recurring one. The Board finds that "will" means "must" in the context of Section 7. Claimant was the senior unassigned train dispatcher on Tuesday, September 7, 1954—date of claim. Then the language of Section 7, taken literally, says that claimant **had** to work said position on that rest day.

In more general terms, said literal language of Article IV, Section 7, says that regularly recurring tag-end relief day service **must** be performed by the man who is the senior unassigned train dispatcher at the location, regardless of whether he (1) is working that day on some other position; (2) is resting that day as part of some other position he is temporarily filling; or (3) on that day is connected with no other position in any way.

This is the literal, narrow meaning of Article IV, Section 7. But the Board is of the opinion that the parties would agree that, in terms of the whole relevant Agreement and in terms of the practical operating necessities of a train dispatching office, said meaning makes little or no sense, particularly in respect to (1) listed in the preceding paragraph. It might well produce situations approaching chaos, with unassigned train dispatchers hopping gaily (or morosely) from position to position almost day by day.

It follows that the language of Article IV, Section 7, must be interpreted more broadly, so as to bring it into harmony with the meaning of other relevant provisions of the Agreement, specifically the language of Article II, Section 10-b, in respect to the filling of temporary vacancies. In the latter section said vacancies may or must be filled, under specified circumstances, by senior "qualified and available" unassigned train dispatchers. The Board is of the opinion that the parties could not have purposefully intended to omit these words from the language of Article IV, Section 7. Carrier could not have agreed that a regularly recurring tag-end relief day should be filled by an "unqualified" senior unassigned train dispatcher, nor by one who for any reason was "unavailable." In short, "qualified and available" must be regarded as having been inserted after the word "senior" in Article IV, Section 7.

If this is true, and the Board so finds, the next question concerns itself with the meaning and application of "qualified" and "available." The Board is unable to find any definitions of these words in the Agreement. It follows that Carrier in the first instance has the right to make reasonable interpretations thereof, subject to the Federal Hours of Service Act and to any relevant provisions of the Agreement, and always subject to the Employes' right to challenge said interpretations through regular grievance-settlement channels.

Of the two words, "available" is the one at issue in the instant case. Carrier has interpreted it in such a way that a senior qualified extra or unassigned train dispatcher who has previously moved into a temporary vacancy and is resting on one of the rest days regularly allotted to the position on which the vacancy has occurred is **not** available to move on that day into another position having a tag-end relief day on said date. The Board finds said interpretation reasonable and has no disposition to alter it.

The entire analysis above may be summarized as follows: As of claim date Claimant (1) was a senior unassigned train dispatcher; but (2) was not available to work on Position No. 340. From these two conclusions it follows that the claim cannot be sustained, and Carrier did not violate the Agreement.

The Board deems it important to explain what issues the instant Award settles and does not settle. (1) The decision here does not say that an unassigned train dispatcher on Carrier's property has no right to five consecutive days of work on one or more temporary vacancies if he is available. On the contrary, he has such right **if** he is available. But under the facts of the instant case the Board has ruled that Claimant was not available. (2) In this case the Board's findings are confined to the special kind of temporary vacancy known as regularly recurring tag-end relief-day vacancies. Other

kinds of temporary vacancies were not before the Board here. (3) The Board has not here passed on the question—because not raised by the Parties or the case—as to whether, when an extra train dispatcher has the **obligation** to remain on a temporary vacancy (like that on Position No. 354), he also has the correlative **right** to stay on same until finished regardless of Carrier's possible desire to move him, subject of course to the return of the regular occupant or his displacement by a senior unassigned dispatcher.

**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 Employe involved in this dispute are respectively carrier and employe 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 Agreement was not violated.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of May, 1959.