

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, 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 Friday, May 20 and Saturday, May 21, 1955, it failed and refused to use senior unassigned Train Dispatcher R. E. Johnson, to fill a vacancy in Relief Position No. 2, scheduled to provide rest day relief for Assistant Chief Dispatcher Position No. 50, beginning 9:00 P. M., Friday, May 20, 1955 and beginning 9:00 P. M., Saturday, May 21, 1955, and instead filled each vacancy with Mr. R. M. Bethune, an unassigned train dispatcher junior to Dispatcher R. E. Johnson.

(b) Carrier shall now compensate unassigned Train Dispatcher R. E. Johnson, a day's pay at the Assistant Chief Dispatcher's pro rata daily rate for Friday, May 20 and Saturday, May 21, 1955 (two days pay) for its failure to use him on those days to fill temporary vacancies occurred in Relief Position No. 2.

EMPLOYEES' STATEMENT OF FACTS: There exists an Agreement between the parties to this dispute bearing an effective date of 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.

Attached hereto as Exhibit TD-No. 1 are rules contained in the Agreement effective September 1, 1949, which are pertinent to this dispute.

On May 1, 1955, subsequent thereto, embracing May 20, and 21, 1955, Carrier maintained in its Galveston, Texas train dispatching office, seven (7) regular train dispatcher positions included fully within the scope of the current Agreement, namely:

(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.

The Carrier is uninformed as to the argument the Employees will advance in their ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the organization's ex parte submission or any subsequent oral arguments or briefs submitted by the petitioning organization in this dispute.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Johnson had been used to fill a temporary vacancy in Relief Position No. 2 on Thursday, Friday and Saturday, May 12, 13 and 14, 1955. He was then assigned to fill Position No. 50 from May 15 to June 4. He worked the position on Sunday and Monday, May 15 and 16, but having then worked five consecutive days he was held off duty for Tuesday and Wednesday, May 17 and 18.

On those two days Fewell, his junior, who had not already worked five consecutive days, was used to fill the position.

Claimant worked Position No. 50 on Thursday, May 19, and continuously thereafter until June 4, except, of course, on its rest days Friday and Saturday.

The reliefs for the rest days of Position No. 50 are within the regular duties of Relief Position No. 2, which was temporarily filled by unassigned Dispatcher Bethune until his displacement on Monday, May 23, by senior unassigned dispatcher Fewell, who had completed another temporary assignment. Dispatcher Bethune, as the temporary incumbent of Relief Position No. 2, therefore supplied the relief for Position No. 50 on its rest days, Friday and Saturday, May 20 and 21.

As Claimant Johnson did not work on those days and had worked only one day since his last two rest days, the claim is that he was the "senior qualified and available unassigned train dispatcher who will not thereby have claim to work more than five (5) consecutive days", and therefore under Article II, Sections 10-d and 14, should have filled the temporary vacancy in Relief Position No. 2 on May 20 and 21. But the reason why he did not work on those days was that they were the rest days of Position No. 50, which he was filling under an unfinished temporary assignment until June 4.

To be entitled as a qualified unassigned train dispatcher to fill the temporary vacancy he must under Article II, Section 10-b, meet three requirements: (1) he must be the senior; (2) he must be available; and (3) he must not thereby have claim to work more than five consecutive days. Claimant met the first and third requirements, but not the second.

For it is well settled by awards of this Division that while holding one unfinished assignment he was not available to hold another. Awards 8812, 8813, 8814, 8823, 8824 and 8912.

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 Employees involved in this dispute are respectively Carrier and Employees 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: F. P. Morse
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1959.