

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)**

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, Section 10-b and 14, when on Saturday, April 10, 1954, it denied unassigned Train Dispatcher H. A. Miller his right to perform dispatcher service on Assistant Chief Dispatcher Position No. 202, a position for which he was qualified, available and willing to perform service.

(b) Carrier shall now compensate unassigned Train Dispatcher H. A. Miller a day's pay at pro rata rate for Saturday, April 10, 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 Mr. J. D. Hunter, an unassigned train dispatcher junior to Dispatcher Miller.

EMPLOYEES' STATEMENT OF FACTS: On Tuesday, April 6, 1954, unassigned Train Dispatcher H. A. Miller was used to fill a vacancy in trick train dispatcher Position No. 225, hours 4:00 P. M. until 12:00 P. M. daily except Saturday and Sunday, the rest days assigned to Position No. 225.

Dispatcher Miller performed service on Position No. 225 Tuesday, April 6, 1954 through Friday, April 9, 1954, four (4) consecutive days.

On Saturday, April 10, 1954, a vacancy occurred in Assistant Chief Dispatcher Position No. 202, hours 4:00 P. M. until 12:00 P. M.

Dispatcher Miller was available, qualified and willing to fill the vacancy in Position No. 202, Saturday, April 10, 1954, which would have constituted his fifth consecutive day of train dispatcher service.

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 brief 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: On Saturday, April 10, 1954, Claimant Miller was on an unfinished temporary vacancy of more than seven calendar days on Position No. 225, but Claimant did not work that day because it was a rest day for that position.

Dispatcher Hunter, who is junior to Claimant, was used to fill a one-day temporary vacancy on Position No. 202 on Saturday, April 10, 1954, and the claim is that Claimant Miller was denied his right to perform service on Position No. 202 this date in violation of Article II, Sections 10-b and 14.

Award 8983 and others between the same parties are determinative of the present claim, since Claimant Miller, being on one uncompleted temporary assignment, was not available for another.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1960.