

Award No. 10413
Docket No. TD-10161

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

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

(a) The Chicago & Illinois Midland Railway Company, hereinafter referred to as the Carrier violated the currently effective Agreement between the parties to this dispute, particularly Article II, Section 10-b, when on Saturday, April 27 and Sunday, April 28, 1957 it failed and refused to use unassigned Train Dispatcher J. E. Heaberlin to perform extra work in its Springfield, Illinois train dispatching office.

(b) Carrier shall now compensate Train Dispatcher J. E. Heaberlin the difference between what he earned as telegrapher and what he would have earned as trick train dispatcher had he been used to perform service as such on Saturday, April 27 and Sunday, April 28, 1957.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between the parties, effective August 16, 1946, 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.

Article II, Section 10-b, Section 14, Article IV, Section 1-b, Section 7 and Section 8, which are particularly pertinent to the instant claim are quoted here for ready reference.

"Section 10-b. Temporary vacancies of not more than seven (7) calendar days' duration may be filled in the following order of precedence: (1) as a fifth day of service for any available relief train dispatcher holding a four-day assignment, (2) by the senior qualified and available unassigned train dispatcher who will not thereby have claim to work more than five (5) consecutive days, or (3) as provided hereinafter for a temporary vacancy of more than seven (7) calendar days. A temporary vacancy known to be of more than seven (7) calendar days' duration will be made known to the train dispatchers in the office and will be filled by permitting regularly assigned train dispatchers to place themselves, in accordance with

Heaberlin is a junior unassigned train dispatcher and the rules and long established past practices thereunder have not been revised to provide such application, Heaberlin can have no claim to the regular relief service here involved of less than four days, which was performed by a senior available employee. Therefore, there is neither equity, practice, or rule to support his claim.

We, therefore, respectfully request that the claims of the employees in this case be denied.

All data in support of the carrier's position in connection with this claim has been presented to the duly authorized representative of the employees, and is made a part of the particular question in dispute.

OPINION OF BOARD: Senior unassigned Train Dispatcher Biggart performed service on a temporary vacancy, working Wednesday April 17, Thursday April 18, Friday April 19, Monday April 22, through Sunday April 28, 1957, a total of seven consecutive days.

The Employees state that the Carrier violated Article II, Section 10 (b) when it permitted Biggart to perform service on a temporary vacancy for more than five (5) days.

The Carrier states that Biggart was properly assigned under Article IV Section 7 of the Agreement.

The Board finds that an unassigned train dispatcher cannot work a temporary vacancy for more than five (5) days under Article II Section 10 (b), the pertinent part of which reads as follows:

"Temporary vacancies of not more than seven (7) calendar days' duration may be filled in the following order of precedence:

(1) As a fifth day of service for any available relief train dispatcher holding a four-day assignment, (2) by the senior qualified and available unassigned train dispatcher who will not thereby have claim to work more than five (5) consecutive days. * * *

Biggart had worked the temporary vacancy for five (5) days, therefore he was not available to work the two (2) rest days of this position.

This claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March 1962.