Award No. 10719
Docket No. TD-12198

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY — FORT WORTH AND DENVER RAILWAY COMPANY (Burlington-Rock Island Railroad Company)

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

(a) The Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company-Fort Worth & Denver Railroad Company (Burlington-Rock Island Railroad Company), hereinafter referred to as "the Carrier" violated the effective schedule agreement between the parties, specifically Rules 12 and 14 thereof, when it denied Train Dispatcher D. G. Stice the right to perform service on a temporary vacancy in the Carrier's Teague, Texas Office, December 19 through December 30, 1959.

(b) The Carrier shall now compensate Claimant D. G. Stice for the difference between what he earned in other service during the specified period and what he would have been compensated had he been used in train dispatcher service.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties, effect August 1, 1942, and since then from time to time revised. Said agreement and revisions thereof are on file with your Honorable Board and by this reference are incorporated into this submission the same as though fully set out herein.

The Agreement rules here specifically involved are Rules 12 and 14. The latter was revised effective September 1, 1949, and again effective as of June 10, 1954. For ready reference the provisions material to this dispute are quoted here.

RULE 12. TEMORARY VACANCIES

for the vacation period which he elected to spend on the job. Dispatcher Price was not afforded a vacation, but he was paid in lieu thereof. In this way the terms of the Agreement were complied with.

There is no basis for a claim by a second employe where the vacation was worked and pay in lieu thereof was offered and accepted."

The "Opinion of Board" in Award No. 7404 is on all fours with the dispute at bar, and fully substantiates the position of the Carrier that this claim is not supported by the applicable agreement, and it is therefore respectfully requested that the claim be denied in its entirety.

In conclusion, the Carrier respectfully submits that:

(1) The Carrier has conclusively shown that Rule 12 has no application to the facts in this dispute because there existed no vacation vacancy.

(2) Under the provisions of Rule 14, the Carrier, with the concurrence of Dispatcher Wood, exercised the discretion specified when "vacation is not afforded" and made "payment in lieu thereof"; thereby complying with the terms of the Vacation Agreement, and leaving no basis for a claim by another or second employe — Claimant Stice.

All matters contained herein have been subject of conference discussion and correspondence between the parties.

OPINION OF BOARD: This dispute is between the American Train Dispatcher Association and The Burlington-Rock Island Railroad Company.

A vacation had been scheduled for Train Dispatcher Wood. He did not take the vacation but worked instead. If he had taken the vacation, Claimant would have been entitled to fill the position.

Petitioner contends that the position became vacant when the vacation was scheduled.

Carrier contends that position was never vacant and that it is not mandatory that the employe take the vacation.

We are of the opinion that it is not mandatory that Wood take the vacation. We are of the further opinion that the position did not become vacant.

Award 7404 — Larkin is squarely in point. While there were some different issues involved, the exact issues involved herein were explicitly covered in the award. We concur with the opinion expressed therein.

For the foregoing reasons we find there has been no violation of the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.