

Award No. 11069

Docket No. TD-12595

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ralph D. McMillen, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, (hereinafter referred to as "the Carrier"), violated the provisions of Regulation 2-B-1(e) Part I of the schedule agreement between the parties, effective June 1, 1960, when on June 4, 1960, it failed to place Train Dispatcher C. E. Biddison upon a temporary vacancy for which he was the senior applicant.

(b) The Carrier shall now be required to compensate the said C. E. Biddison one day's compensation at pro rata rate of Train Dispatcher for June 4, 5, 6, 7 and 14, 1960, on each of which days he would have performed service on the said temporary vacancy had Carrier complied with the Agreement.

EMPLOYES' STATEMENT OF FACTS: An Agreement governing compensation and working conditions, effective June 1, 1960, between the parties to this dispute, and applicable to the claim identified herein, was in effect at the time this dispute arose. A copy thereof is on file with your Honorable Board, and is, by this reference, made a part of this submission as though fully set out herein.

The Agreement provisions primarily involved in this dispute are the third and seventh paragraphs of Regulation 2-B-1 (e) but for the Board's ready reference the entire regulation is here quoted:

"(e) Positions and vacancies while under advertisement, pending award and assignment, will be temporarily assigned to the senior applicant who makes written request therefor within three (3) days from the date the bulletin is posted.

Temporary positions or vacancies known to be of more than four (4) days' and less than thirty (30) days' duration will be assigned to the senior qualified applicant who makes written request therefor. When it is known sufficiently in advance that

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that under the clear and specific provisions of Regulation 2-B-1 (e), the Claimant was not entitled to fill the temporary vacancy which he had requested and that the Employees have failed to present any valid evidence whatsoever to the contrary.

Therefore, the Carrier respectfully submits your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that the Carrier violated the provisions of the Regulation 2-B-1(e) of the applicable Agreement, when it failed to place Train Dispatcher C. E. Biddison upon a temporary vacancy for which he was the senior applicant.

The agreed upon facts are as follows:

"Effective 10:00 P. M., May 31, 1960, the third trick train dispatcher position covering Section E was abolished and the work of such section was combined with that of Section D; such combination of sections being applicable to the third-trick only.

"Claimant C. E. Biddison was regularly assigned as train dispatcher, Section D, tour of duty 10:00 P. M., to 6:00 A. M., rest days Thursday and Friday. Biddison and E. W. Burns, an extra train dispatcher, were the only employees qualified on Section D, third trick.

"F. E. Cochran was regularly assigned as train dispatcher, relief, Sections C and D, with the following tour of duty:

| | |
|-----------------------|-------------------------------------|
| "Sunday and Monday | 6:00 A. M. - 2:00 P. M., Section D |
| Tuesday and Wednesday | 2:00 P. M. - 10:00 P. M., Section D |
| Thursday | 2:00 P. M. - 10:00 P. M., Section C |
| Friday and Saturday | rest days |

"Mr. Cochran retired effective June 2, 1960. This position was advertised on Bulletin No. 5, dated June 3, 1960.

"C. W. Morris, Jr., was regularly assigned as train dispatcher, relief, Section A, with the following tour of duty:

| | |
|----------------------|--------------------------|
| "Saturday and Sunday | 6:00 A. M. - 2:00 P. M. |
| Monday and Tuesday | 2:00 P. M. - 10:00 P. M. |
| Wednesday | 10:00 P. M. - 6:00 A. M. |
| Thursday and Friday | Rest days |

"On June 2, 1960, C. W. Morris, Jr., submitted a written request in accordance with Regulation 2-B-1(e) to work the vacancy created by Cochran's retirement pending advertisement and award of this position. The request was granted and Morris commenced work on this position at 6:00 A. M., Sunday, June 5, 1960.

"Claimant Biddison likewise submitted a request in writing on June 2, 1960, to work the temporary vacancy of train dispatcher, relief, Section A, created by the temporary assignment of Morris to Cochran's former position. This request was declined by the Supervising Operator on the basis that such assignment would result in additional expense to the Company through payment of the time and one half rate to extra train dispatcher Burns on June 7, 8, and 14, 1960."

The particular paragraphs of 2-B-1(e) that are germane to the instant claim are to wit:

"The senior applicant will be placed on the temporary assignment on the first day following the determination by the proper officer that he is the applicant entitled to such assignment; provided, however, that nothing in this Regulation (2-B-1) shall require that such placement be made effective on a day or days that would entail additional expense to the Company through payment of the time and one-half rate."

"Train Dispatchers requesting temporary assignments, under this paragraph (e) of Regulation 2-B-1, will do so without additional expense to the Company."

From the Agreed-Upon Facts we find that Claimant Biddison and Extra Dispatcher E. W. Burns were the only Employees qualified on Section D, third trick. It is very clear to us that if the Carrier had permitted Biddison to fill the temporary vacancy, that the Carrier would

have incurred "additional expense" through the payment of time and one-half to Extra Train Dispatcher Burns on June 7, 8, and 14, 1960. As stated in Award 1723 (Fourth Division) "This overtime payment certainly would involve "additional expense to the Company" within the plain and usual language employed in Rule 5-A-2. The expense proviso of that Rule is stated clearly and without qualification and affords no basis for Petitioner's contention that only additional yardmaster expense may be considered."

The basic facts of Award 1723 (Fourth Division) are the same as in this claim and we so hold.

The Organization introduced Regulation 5-G-1 which reads:

"When in the opinion of the Office Chairman, the extra list is not adequate to meet normal requirements, the subject is one that may properly be discussed by the Office Chairman with the proper officer of the Company."

We do not believe that this Regulation 5-G-1 is an issue in the present claim.

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1963.

LABOR MEMBER'S DISSENT TO AWARD 11069, DOCKET TD-12595

This Award ignores the clear and **mandatory** provisions of the Agreement dealing with placement on temporary assignments, which provision states:

"The senior applicant **will be placed** on the temporary assignment on the first day following the determination by the proper officer that he is the applicant entitled to such assignment; provided, however, that nothing in this Regulation (2-B-1) shall require that **such placement be made effective** on a day or days that would entail additional expense to the Company through payment of the time and one-half rate." (Emphasis ours.)

The Award further, summarily dismisses Regulation 5-G-1 as being not in issue in this dispute, despite the evidence in the record that **IF** "additional expense to Company" would have been incurred it was because of Carrier's own actions in combining positions which resulted in insufficiently qualified extra dispatchers and **NOT** because of the application of Regulation 2-B-1(e).

For these and other reasons, dissent to Award 12069 is registered.

R. H. Hack
Labor Member