

Award No. 11098
Docket No. TD-12421

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(a) The Gulf Mobile and Ohio Railroad Company, hereinafter referred to as "the Carrier" violated the effective schedule agreement between the parties, specifically Article 5(b) and Article 6(d) thereof, when it denied extra train dispatcher J. L. Gates the right to perform service on a temporary vacancy in the Carrier's New Albany, Mississippi train dispatching office for a period of 18 days during December, 1959.

(b) The Carrier shall now compensate Claimant J. L. Gates the difference between what he earned in other service and what he would have been compensated had he been used in train dispatcher service, which is \$7.37 per day, for each of said 18 days for a total amount of \$132.66.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties, effective July 1, 1948, which, since the effective date, has been revised from time to time. 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 specifically pertinent to the instant case are Article 5(b) and Article 6(d). The latter Article was revised effective September 1, 1949, and again effective June 10, 1954. For ready reference the provisions most pertinent to this dispute are quoted as follows:

"ARTICLE 5

"(b) TEMPORARY VACANCIES:

Temporary vacancies resulting from sickness, vacations, leaves

to the clear language of the Agreement and would place an obligation on the Carrier that the Agreement does not provide.

The claim is not in accordance with the Agreement and should be denied.

OPINION OF BOARD: The Claimant here held a regular assignment as Telegrapher, and who also served Carrier as an Extra Dispatcher, but held no regular assignment as a Dispatcher. Claim is made by J. L. Gates, as Extra Dispatcher for the difference in pay as Telegrapher and Dispatcher's pay, for a period of eighteen days, as a result of Dispatchers R. H. Tindall, working is allowed vacation period, and Dispatcher C. L. Stanford, working three days of his allowed vacation period, for which Carrier compensated said Dispatchers the proper allowances.

The Employee contends Carrier should have relieved him from his telegrapher position, in order that he may relieve the two Dispatchers for their vacation allowances, as provided by Article 5(b) Temporary Vacancies and Article 6, Vacations, as revised June 10, 1954. Article III, Section 1(b), of the Agreement between the parties.

The Claimant here asserts that he should have been assigned as Relief Dispatcher while the regular assigned dispatchers were on vacation. But the facts before us show that such Dispatchers were paid vacation allowances accruing to them by reason of the fact that the Dispatchers did not take the vacation time they were entitled to. In view of the fact such Dispatchers did not take time they were entitled to thereby no vacancy was created that would entitle this Claimant to relieve the Dispatchers, and this claim must be denied on its merits. Article 6—Section (d), Vacations—provides when vacations will be afforded. Section (d)2—provides when vacations are not afforded. It will be noted very clearly that when vacation is not afforded, that a dispatcher will be paid in lieu of vacation.

Nothing in this Agreement requires that a Train Dispatcher take a vacation, nor is there anything to prohibit Carrier from allowing a Dispatcher pay, when a vacation is not taken. No vacancy was brought about by the Dispatchers not taking their vacations, hence there is no basis for the claim here. We accept the definition as made in Award 13361—First Division—when it held "A vacancy in a job or run . . . arises through the absence of the usual occupant from his regularly assigned position." Also see Award 10719.

The claim here does not merit a sustaining award.

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 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 31st day of January, 1963.

Labor Member's Dissent to Award 11098, Docket TD-12421

Award 11098 is incorrect in holding that:

"Nothing in this Agreement requires that a Train Dispatcher take a vacation, . . ."

The Award ignores the mandatory provision that:

"Effective January 1, 1954, an annual vacation of three weeks (15 working days) with pay, under the conditions set forth in Section 2 below, **will be granted** to each dispatcher . . ." (Emphasis ours.)

The Award misconstrues Article III Section 2(2) by reading into it something not contained therein.

This Section provides merely for the manner of payment in the rare event a vacation has not been afforded. Carrier itself freely admits that:

"Dispatchers have been granted vacations for some twenty years and this is the first complaint ever made that dispatchers were not **afforded full vacations.**" (Emphasis ours.)

At least as much credence should be given the content of this Section as has been accorded the caption thereto which states:

"(2) When vacations are not afforded"

Article III Section 1 is determinative of the conditions for granting or not granting of a vacation and Section 2 in its entirety concerns the manner of payment.

Despite the presence of the caption of Article III Section 2(2) in the Dispatcher's Agreement and the fact that Dispatchers are not governed by the National Vacation Agreement construed in Award 6658, the principles enunciated therein are applicable. These principles were ignored by the majority as were the principles laid down by Referee Wayne L. Morse's interpretation of vacation rules, in 1942.

Dissent is hereby registered to Award 11098.

/s/ **R. H. Hack**
R. H. Hack, Labor Member