

Award No. 13320

Docket No. TD-14625

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
(Western 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, particularly Article II, Sections 10-b and 14, and Article IV, Section 1 (a) and 1 (b), when it failed and refused to compensate Extra or Unassigned Train Dispatcher K. L. Miller at time and one-half rate for service performed on Thursday, June 21 and Friday, June 22, 1962.

(b) The Carrier shall not be required to compensate Extra or Unassigned Train Dispatcher K. L. Miller the difference between pro-rata rate paid for service performed on said dates and the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties in effect, a copy of which is on file with your Honorable Board, and the same is incorporated into this submission the same as though fully set out herein.

For ready reference the Agreement rules which the Employees aver to be particularly material to this dispute are here quoted in pertinent part:

Article II, Section 10-b:

"Section 10-b. . . . 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 dispatcher to place themselves, in accordance with their seniority, on this and any other vacancy, other than that of selected assistant chief dispatchers, resulting from such placement; any such temporary vacancy on which a regularly assigned train dispatcher does not place himself to be filled by the senior qualified and available unassigned train dispatcher who will not thereby have claim to work more than five (5) consecutive days"

"(143) Q. Is he paid time and one-half for working Wednesday and Thursday?

A. No. He has not worked five consecutive days and he is an unassigned dispatcher." (Emphasis Supplied)

"(144) Q. Can the railroad relieve him on the rest days assigned to the position by using another and junior unassigned dispatcher?

A. Yes." (Emphasis Supplied)

"(145) Q. Supposing the senior unassigned dispatcher does work the assigned Wednesday and Thursday rest days. Can the railroad use another unassigned dispatcher to relieve him on Saturday and Sunday (the sixth and seventh consecutive days)?

A. Yes. An unassigned dispatcher cannot CLAIM more than five consecutive days work." (Emphasis Supplied)

The Petitioner's interpretation of Article II, Section 10-b and Article IV, Section 1-b in Question and Answers No. 70 and 145 clearly supports the Carrier's position that the claimant Mr. Miller did not have an agreement right to work as train dispatcher in excess of five (5) consecutive days, and did not therefore have any agreement right to remain on and protect the temporary vacancy on Train Dispatcher Position No. 2250 on June 19 and 20, 1962 after having worked five (5) consecutive days as train dispatcher on June 14, 15, 16, 17 and 18, 1962.

The Petitioner's interpretation of Article II, Section 1-b in Questions and Answers Nos. 140 and 143 also supports the Carrier's position that, since he had not worked five (5) consecutive days as train dispatcher, the claimant Mr. Miller was not entitled to the time and one-half rates claimed in his behalf for the work he performed on Thursday and Friday, June 21 and 22, 1962, in protecting the tag-end rest days of Train Dispatcher Position No. 2245 (Thursday) and No. 2250 (Friday) after having taken two days off on Tuesday and Wednesday, June 19 and 20, 1962.

The Petitioner's interpretations quoted above also recognized that unassigned train dispatchers continue in that category and do not become "regularly assigned train dispatchers" when used under the agreement rules to fill temporary vacancies.

In conclusion, the respondent Carrier respectfully asserts that the Employees' claim in the instant dispute is wholly without support under the rules of the current Train Dispatchers' Agreement and should be denied for the reasons set forth herein.

OPINION OF BOARD: Claimant Miller performed tag-end rest day relief service on Thursday, June 14, 1962 on Position 2245. He also performed tag-end rest day relief service on Friday, June 15, 1962, on Position 2250. A temporary vacancy of more than seven calendar days arose for Position 2250, on Saturday, June 16, 1962. Miller was required to fill the temporary assignment. He performed service thereon on June 16, 17 and 18. The assigned rest days of the temporary assignment were Thursday and Friday, June 21 and 22. Carrier held Miller off the assignment on Tuesday and Wednesday, June 19 and 20, claiming that he had performed five consecutive days' service prior thereto. He also was required to observe the rest days of his temporary assignment, Thursday and Friday, June 21 and 22. This gave him four consecutive rest

days. However, on Thursday, June 21 and Friday, June 22, Miller was assigned to fill the two tag-end rest day relief positions on 2245 and 2250. He was compensated at the pro rata rate. On Saturday, June 23, Claimant returned to Position 2250.

This claim is for the difference between the pro rata rate and the time and one-half rate for service performed on June 21 and 22.

Claimant alleges that he was assigned to the temporary vacancy on Position 2250, that he performed service on the rest days thereof, and therefore he was entitled to compensation at the rate of time and one-half for the rest day service so performed.

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Carrier argues that Claimant had performed service on five consecutive days, and therefore was required to take rest days on June 19 and 20. They further argue that since Claimant had not performed service on the five days immediately preceding June 21 and 22, he was only entitled to pro rata compensation for these days.

We are of the opinion that when an unassigned dispatcher is used to fill a temporary vacancy of more than seven days, he remains on that assignment for the duration of the vacancy and is required, therefore, to assume the working conditions and rest days of the said position. Actually in cases of this nature, the unassigned dispatcher assumes the status of the regular assigned dispatcher for the instant assignment, and is therefore unavailable to fill other temporary vacancies while he is so assigned. But in the event the dispatcher is required to so perform, he is entitled to compensation at the time and one-half rate.

In this case the occupation of the temporary vacancy on Position 2250 commenced on June 16. The rest days would properly fall on June 21 and 22. Therefore, since Claimant was required to perform service on his proper rest days, he was entitled to be compensated at the time and one-half rate.

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1965.