

Award Number 17704

Docket Number TD-17915

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, 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 effective Agreement between the parties, Article II, Section 10-6 thereof in particular, when, on February 3 and 4, 1968, it failed and refused to fill a temporary vacancy in its Springfield, Illinois train dispatching office as required by said Agreement.
- (b) Carrier now be required to compensate Train Dispatcher J. A. Allen two (2) day's compensation at time and one-half rate of Assistant Chief Dispatcher because of the violation referred to in paragraph (a) hereof.

EMPLOYEES' STATEMENT OF FACTS: At the time here in question an Agreement was in effect between the parties. A copy of that Agreement should be on file with this Board and by this reference the same is incorporated into and made a part of this submission as though fully set out.

For the Board's ready reference Article II, Section 10-b is here quoted, in full:

"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 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. Upon completion of such temporary service, regularly assigned train dispatchers affected shall either displace a junior regularly assigned train dispatcher occupying a

sions of the agreement as well as the principles set forth in Awards of the III Division NRBA such as 10393, 11131, 13283, 13741, 13982, 14002, 14081 and 14118.

Signed this 25th day of June 1968.

CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

/s/ C. E. Frankenfeld

C. E. Frankenfeld
Manager of Personnel"

(Exhibits Not Reproduced)

OPINION OF BOARD: On Saturday, February 3 and Sunday, February 4, 1968, the regularly assigned third trick Assistant Chief Dispatcher (11:00 P.M. to 7:00 A.M.) laid off work on account of illness.

By notice dated February 3, 1968 Carrier blanked the position for Saturday and Sunday, stating that no trains were to be operated on those shifts.

Claimant was regularly assigned Relief Dispatcher whose regular schedule was relief of Chief Dispatcher on Sunday, relief of second trick Assistant Chief Dispatcher on Monday and Tuesday, relief of third trick Assistant Chief Dispatcher on Wednesday and Thursday. His rest days were Friday and Saturday.

Claimant contends that he should have been used at time and one-half rate to fill the temporary vacancy created for these two days by absence of Third Trick assistant Chief Dispatcher.

Employees cite Article II, Section 10-b of the Agreement. It reads as follows:

"ARTICLE II, Section 10-b. Temporary vacancies of not more than seven (7) calendar days' duration may be filled in the following order or precedent: (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 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. Upon completion of such temporary service, regularly assigned train dispatchers affected shall either displace a junior regularly assigned train dispatcher occupying a temporary vacancy or return to their regular assignment if it has not been abolished or taken by a senior train dispatcher through the exercise of displacement rights, in which latter event they will, within forty-eight (48) hours, exercise seniority over junior

train dispatchers other than selected assistant chief dispatchers. Time lost in making changes under the provisions of this Section 10-b will not be paid for, and regularly assigned train dispatchers who place themselves on temporary vacancies under the provisions of this Section 10-b shall assume the rest days and other conditions of such temporary vacancies."

In Employes' view, there existed a temporary vacancy in the instant situation within the seven day limit laid down by 10-b and therefore should have been filled "by permitting regular assigned train dispatchers", in this case, Claimant, to place himself in the vacancy. Inasmuch as Claimant was on the last day of his two rest days on Saturday and was not due to report for duty until 7:00 A.M. on Sunday, he was available for the 11:00 P.M. to 7:00 A.M. vacancy on Saturday night and the 11:00 P.M. to 7:00 A.M. vacancy on Sunday night. It is conceded that he would not then have been able to work his own assignment on Sunday (relief of Chief Dispatcher, 7:00 A.M. to 3:00 P.M.) on account of the Hours of Service Law.

Carrier takes the position that Article II, Section 10-b does not require the assignment of any employe under these circumstances, because it does not prevent Carrier from blanking a position when the regularly assigned incumbent of such position absents himself therefrom and there is no work to be performed.

Attention is called by Carrier to the following in Section 10-b:

(a) The statement therein that "Temporary vacancies . . . may be filled" etc. This is regarded as clear retention of discretion to fill or not to fill as a management prerogative.

(b) The specific exclusion of "selected assistant chief dispatchers" from right of access to the vacancies dealt with. The position in question is held by Carrier to conform to this category.

Carrier's position, in sum, is that there is nothing in the Agreement which requires that overtime hours be made available for non-existent work to a holder of a five-day assignment who worked on each of the days of his assignment and was in fact scheduled to work on Sunday. February 4, 1968 starting at 7:00 A.M. the time on which the Saturday claimed shift would have ended and the day on which the Sunday claimed shift would have started (at 11:00 P.M.).

This Board has repeatedly upheld Carrier's right to blank positions when the incumbent of a position is not available, except where an Agreement rule expressly guarantees that such position be worked. We find no such guarantee in Article II, Section 10-b, nor does the record reveal one elsewhere in the Agreement. There is no showing in the record that the blanking of work for the title and the shift or in any way a subterfuge. Awards 7256, 12099, 13175.

Our reasoning was well stated on this subject in Award 14252:

"Furthermore, it appears to us that the mandatory provision urged by the Organization was intended to apply to the method used in selecting the replacement—rather than prohibiting the Carrier from exercising its right to blank a position. If such was the intent of the parties, they could readily have inserted language to that effect. In the absence of a specific rule depriving the Carrier from exercising its basic inherent right, we may not

substitute our judgment for that of the parties. In effect, we would be rewriting the contract, which definitely is not our function. We can only interpret those provisions which the parties have previously agreed upon and included in their contract."

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1970.

LABOR MEMBERS' DISSENT TO AWARD 17704

DOCKET TD 17915 (Referee Yagoda)

The majority erred in Award 17704.

The agreement is clear. The agreement states unequivocally a temporary vacancy "... will be made known to the train dispatchers . . ." and then further states "... will be filled ..." (E.S.)

This language should mean what it says. The absence of work has no bearing on the claim. Train dispatcher positions are seven days-a-week positions and the carrier so admits in the record where it produced the regular assignments. This chart of position has a column titled "Work Days" and the position involved shows as work days Saturday and Sunday. The claim days in this dispute are a Saturday and a Sunday.

For this and other reasons, I dissent.

G. P. Kasamis, Labor Member