

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20228
Docket Number TD-20193

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Chicago, Milwaukee, St. Paul and Pacific
Railroad Company

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

(a) The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, Rule 28 and Rule 7 thereof in particular, when it failed and refused to compensate Claimant Train Dispatcher J. Leavitt at the time and one-half rate for February 5, 6, 7, 8, 9, 12, 13, 14, 16, 19, 20, 21, 22, 23, 26, 27 and 28, 1972.

(b) Because of said violations Carrier shall now be required to compensate Claimant Leavitt the difference between straight time rate and time and one-half rate of the position worked at Ottumwa, Iowa for February 5, 6, 7, 8, 9, 12, 13, 14, 16, 19, 20, 21, 22, 23, 26, 27 and 28, 1972.

OPINION OF BOARD: Claimant, a regularly assigned Second Trick Train Dispatcher at Ottumwa, Iowa, was assigned to a Third Trick Dispatcher vacancy at Dubuque, Iowa by bulletin dated January 3, 1972. He requested to be transferred as quickly as possible on January 18, 1972, but did not secure the new position until March 1, 1972 - continuing to work at Ottumwa in the interim.

Petitioner cites Rule 28 of the Agreement, which provides:

"RULE 28 - TRANSFER TO AWARDED POSITIONS

Transfer of successful applicants for new positions and vacancies shall be made as soon as reasonably possible when the carrier has train dispatchers available. If the carrier has train dispatchers available enabling it to effect such transfer and does not do so, then beginning on the sixteenth (16th) day after successful applicant makes written request upon the proper officers of the railroad for transfer, but not in any event until thirty (30) consecutive calendar days have elapsed after assignment by bulletin, Rule 7 shall become applicable."

Rule 7, referred to in Rule 28, provides inter alia that a train dispatcher required to work a position other than the one he obtained in the exercise of seniority shall be compensated therefor at the time and one-half rate. To further understand the intent of the parties we note that Rule 27 provides that a dispatcher who fails to accept a position which has been awarded to him by bulletin becomes an extra dispatcher.

Both parties agree that the essential issue in this dispute is whether there were train dispatchers available, within the meaning of Rule 28.

Carrier asserts that there were no extra train dispatchers available and that the consummation of Claimant's transfer was dependent on a series of moves and postings. Petitioner asserts, contrarily, that the relief dispatcher at Ottumwa was available to relieve Claimant. Carrier argues that when Rule 28 was adopted (in 1950 in a prior agreement) that the Organization's officer who negotiated the rule interpreted the rule and Carrier adopted the interpretation - and the interpretation is still in effect. Carrier further contends that the readoption of a rule without change implies readoption of the interpretation placed on such rule and cites a number of awards which affirm that principle. Carrier's position on this portion of the dispute fails for lack of substantiation; the interpretation referred to was unilateral and not binding on Carrier. We are certain that neither party would accept the principle that a unilaterally determined interpretation of the language of any rule would be binding upon both; surely then such an interpretation cannot be considered to be "mutual" for purposes of affirmation by this Board. Hence we have no Board or mutual interpretations or practice to fall back on.

The parties in writing the Agreement defined an extra dispatcher as "an unassigned train dispatcher" (Rule 22(4)). Neither term was used in Rule 28, which merely specified that transfers shall be made "...when the Carrier has train dispatchers available". Carrier's position would have this Board modify Rule 28 by in effect changing the language quoted to insert the word "extra" before train dispatchers. As both parties know full well this Board's jurisdiction is limited to the interpretation and application of the language of agreements, not their re-writing. "We are precluded from adding, subtracting, or modifying the provisions of an Agreement." (Award 12637)

Carrier argues that it was not reasonable to expect it to assign the relief train dispatcher to Claimant's Ottumwa assignment since that would place the burden of twenty one shifts on three men each week (presumably until an additional dispatcher could be assigned). We do not agree. Carrier makes the determination of the number of employees to be assigned to each location and also as to whether or not extra employees will be carried on the roster; this prerogative of management carries with it the concomitant responsibility of living up to the obligations imposed upon Carrier by the Agreement (Award 18331 and others). We see no burden but the extra cost of overtime to Carrier, which is in part, at least, caused by its determination of the number of train dispatchers to be carried at the location. In Award 12374 we said:

"While Carrier alone has the right to determine the size of the work force in any craft, it has a duty and obligation to keep available an adequate number of employees so that the terms of the Agreement are not breached. Carrier is obligated to have a sufficient number of available signalmen on its roster for its needs. If it fails to do so, it may not complain when a penalty is assessed for a contract violation."

The principle enunciated above is certainly applicable to this dispute. No assertion of emergency is involved herein and we find that the clear language of Rule 28 is controlling.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

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Docket Number TD-20193

Page 4

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1974.