

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20687
Docket Number TD-20542

Robert A. Franden, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Soo Line Railroad Company

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

(a) The Soo Line Railroad Company (hereinafter referred to as "the Carrier"), violated the effective Agreement between the Carrier and its train dispatchers represented by the American Train Dispatchers Association, Rule 22 thereof in particular, when it refused to compensate Extra Train Dispatcher R. E. Gabel (hereinafter referred to as "the Claimant"), for time lost on July 16 and July 29, 1972, as a result of Claimant performing service as an extra train dispatcher.

(b) The Carrier shall now compensate Claimant Extra Train Dispatcher R. E. Gabel eight (8) hours pro rata at third trick dispatcher's rate for July 16, 1972 and eight (8) hours pro rata rate at first trick dispatcher's rate for July 29, 1972.

OPINION OF BOARD: Claimant is an extra train dispatcher assigned to the extra board in Carrier's Enderlin, North Dakota dispatching office. On July 15 and 28, 1972 Claimant was performing extra dispatching service in seniority order off the office extra board. The filling of vacancies from the extra board is controlled by rule 10(a) of the Agreement.

"RULE 10 FILLING POSITIONS -- VACANCIES"

(a) Train dispatcher extra boards shall be established by management in each train dispatcher's office on the Soo Line Railroad Company. Train dispatchers who are not regularly assigned as train dispatchers may select the extra board of their choice by notifying the General Superintendent, in writing, with copy to the Division Superintendent, General Chairman and Office Chairman, American Train Dispatchers Association.

After placing themselves on the extra board of their choice, train dispatchers shall be required to perform all extra work available to them in seniority order except when such service would cause a violation of the Hours of Service Law or prevented from performing such service by physical disability.

"It is understood and agreed that if the number of extra dispatchers assigned to an extra board at a particular dispatching office is less than one for every three regular dispatching assignments, and there are extra dispatchers in excess of this ratio at other dispatching offices, and the General Superintendent determines that additional extra dispatchers are required at the first dispatching office, the General Superintendent and the General Chairman shall agree upon the selection of additional extra dispatchers who shall be required to transfer to the extra board at such dispatching office.

In the event the service of an extra dispatcher is needed in an office in which all extra dispatchers assigned to that office are working as train dispatchers, the extra work will be offered to idle extra dispatchers on the system in seniority order and, if no extra dispatcher claims the extra work, Management may require the junior idle extra dispatcher on the system to perform the extra work.

Extra train dispatchers desiring to transfer from one extra board to another will give ten (10) days' notice of such request in writing to the General Superintendent with copy to the Division Superintendents and the General Chairman. If the requirements of the service permit, and the extra dispatcher is qualified, such permission to transfer will be granted. It is understood and agreed that extra train dispatchers can only be assigned to one extra board at a time."

The vacancies in question were of the character described in rule 10(b):

"(b) Vacancies in existing positions and new positions of six (6) working days or less duration shall be considered extra work and performed by qualified extra dispatchers from the office extra boards in the order of their seniority.

An extra dispatcher must complete one assignment of extra work before he is available for new assignment of extra work."

The service performed by Claimant on the above dates was on the second trick dispatcher position with hours from 4:00 PM to 12:00 AM. The Hours of Service Law prevented Claimant from working the third trick dispatcher position 12:01 AM to 8:00 AM on July 16, 1972 and the first trick dispatcher

position 8:00 AM to 4:00 PM on July 29, 1972. Under the terms of the Agreement the Claimant would have been entitled to work said positions but for the Hours of Service Law. An extra train dispatcher junior to Claimant was used to work these positions.

Rule 10 (a) requires an extra train dispatcher to perform all extra work available to them on a seniority basis unless prevented by physical disability or the Hours of Service Law.

It is the position of the Claimant that even though prohibited from performing the work by the Hours of Service Law he is entitled to be compensated for loss of time under rule 22.

"RULE 22 COMPENSATION FOR LOSS OF TIME

(a) Loss of time on account of the Hours of Service Law or in changing positions by direction of proper authority shall be paid for at the rate of the position for which service was performed immediately prior to such change. Time lost in voluntarily exercising seniority will not be paid for.

(b) If an extra train dispatcher performing service under Rule 10 (b) or (c) is caused to lose time, he will be made whole. If he loses time as a dispatcher, the loss will be paid at the dispatcher's rate. If he loses time as a telegrapher, he will be paid at the telegrapher's rate."

The Carrier takes the position that rule 22 is intended only to protect extra dispatchers against loss of time when moving to and from telegrapher positions. It is their position that an extra dispatcher performing continuance relief service is simply "unavailable" unless his time off duty conformed to the requirements of the Hours of Service Act.

The Organization directs our attention to the wording in 22 (b) "If he loses time as a dispatcher, the loss will be paid at the dispatcher's rate." The Organization asks if an extra train dispatcher is not to be compensated at the dispatcher's rate under the facts of the instant case, under what circumstances would he be compensated at the dispatcher's rate under rule 22 (b). The Carrier only responds that it was not the intent of the parties and would lead to an absurd result.

As we have stated many times we must give the language subject to interpretation its ordinary meaning. We must also assume that the parties included the language in the Agreement to achieve a desired result. The language of Rule 22 (b) is clear in that there was envisioned by the drafters of the Agreement a circumstance when an extra train dispatcher performing

service under Rule 10 (b) would lose time as a dispatcher and be compensated at the dispatcher's rate. We agree with the Organization that these circumstances are present here. The Claimant lost time as a dispatcher due to the Hours of Service act and is entitled to be compensated for said loss.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.

CARRIER MEMBERS' DISSSENT TO AWARD 20687, DOCKET 1D-20542

(Referee Franden)

We dissent. The matters of record which clearly establish this claim is invalid are discussed in the memorandum submitted by the Carrier Members. That memorandum is retained in the Master File and by reference is incorporated in this dissent.

H. J. Naylor

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Labor Member's Answer to Carrier Members'
Dissent to Award 20687, Docket TD-20542

All matters of record and/or the memorandum submitted by the Carrier Members mentioned in the Dissent were considered by the Division prior to adjudicating Docket TD-20542.

As the Dissenters state, the Carrier Members' memorandum is retained in the Master File along with a final and binding Award. Award 20697 sustains the claim attesting that the claim is valid based on the "matters of record".


J. P. Erickson
Labor Member