

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21772
Docket Number TD 21674

William G. Caples, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(The Southern Pacific Transportation Company
((Texas and Louisiana Lines)

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

(a) The Southern Pacific Transportation Company (Texas and Louisiana Lines) (hereinafter referred to as "the Carrier"), violated effective Agreements between the parties, including the Memorandum of Agreement of April 12, 1967 establishing Guaranteed Assigned Dispatchers' positions, the Analysis of that Agreement's provisions initialed by the parties, and a Letter-Agreement of May 29, 1974 when it required Claimant Guaranteed Assigned Dispatcher R. A. Brock to work positions other than that constituting his regular assignment on January 7, 8, 9, 10, 11, 12, 13, 16, 20 and 22, 1975, but refused to compensate him at the overtime rate for such dates.

(b) Because of said violation, the Carrier shall now compensate Claimant Guaranteed Assigned Dispatcher R. A. Brock at the overtime (time and one-half) rate for January 7, 8, 9, 10, 11, 12, 13, 16, 20 and 22, 1975.

OPINION OF BOARD: On each date of claim R. A. Brock was assigned as "Guaranteed Assigned Dispatcher" at the Central Train Dispatching Office in Houston, Texas.

There was in effect an Agreement dated April 12, 1967 between the Association and the Carrier, a Memorandum of Agreement dated April 12, 1967 and an Analysis of that Agreement initialed by the parties and a Letter-Agreement dated May 29, 1974, pertinent parts of which are hereafter quoted.

Agreement (Dated April 12, 1967, Eff. May 1, 1967)

RULE 13.

"When an extra train dispatcher is needed, the senior extra train dispatcher shall be required to report unless prevented by physical disability, while on leave of absence, or occupying any position referred to in Rule 14, or for other justifiable reasons, which reasons must be stated in writing to the chief dispatcher with a copy to the office chairman."

RULE 16.

"(a) Temporary vacancies of less than five (5) working days shall be deemed to be extra work and shall be filled as provided by Rule 13.

"(b) Other temporary vacancies or temporary new positions, or a temporary vacancy as referred to in paragraph (a) of this rule which continues to exist for five (5) or more working days will be filled as follows:

(1) When such temporary vacancy or new position exists, or when it is known that one will exist, written notice thereof shall be promptly posted in the train dispatcher's office, showing date and hour of posting.

(2) The senior regularly assigned train dispatcher who makes application for the job not later than the first day he performs service following the posting will be assigned, unless because of illness or injury he is unable to perform service, and shall remain thereon until termination thereof, which shall be deemed to be on the calendar day on which the assigned incumbent of the vacant position resumes service thereon or on the calendar day the temporary new position is abolished, as the case may be. A train dispatcher taking such assignment must make himself available under the Hours of Service Act.

A regular assigned train dispatcher filling a temporary vacancy must remain on that vacancy until it is terminated as provided in this rule, except if another temporary vacancy which carries a higher rate of pay becomes available, he may move to the higher rated position. If the first temporary vacancy still exists after expiration of the second vacancy, he must then return to the first temporary vacancy if his seniority

permits, and remain thereon until such time as that vacancy terminates or another higher rated temporary vacancy occurs.

At the expiration of a temporary vacancy, filled under this rule, the train dispatcher filling the vacancy may return to his regular position, except as provided for above, or may displace another train dispatcher assigned to another temporary vacancy, except that a train dispatcher who moves up on a temporary vacancy pursuant to this Rule 16 will not be permitted to return to his regular assignment, or to move up on another assignment, on either of the two (2) rest days of the assignment from which he moves, except that if he lost one (1) day due to the Hours of Service Act in moving from his regular assignment to the temporary assignment, he may return to his regular assignment, or move to another temporary assignment on the second rest day of the assignment from which he moved, in order to make up the day lost.

(3) Other temporary vacancies resulting in such rearrangement of force shall thereafter be filled as provided in paragraph (2) above and the position finally made vacant will be filled by the senior available extra train dispatcher.

(4) If a train dispatcher's assigned position has meanwhile been abolished or if he has meanwhile been displaced therefrom, he may exercise seniority rights pursuant to Rule 11 to displace any junior train dispatcher.

(5) If no regularly assigned train dispatcher shall apply for a temporary vacancy or temporary new position as provided for above, then such vacancy or new position shall be assigned to extra train dispatchers in the order of their respective seniority, and they shall remain thereon

until termination thereof or until displaced therefrom except as provided in paragraph (6) below. If more than one vacancy exists on the same track on the same date, extra train dispatchers may elect which vacancy they are to fill in the order of their seniority.

An extra train dispatcher may displace any junior extra train dispatcher filling another temporary vacancy or temporary new position, but will not be required to do so.

(6) An extra train dispatcher who has been on a temporary vacancy or temporary new position for more than thirty (30) calendar days may, if he so desires and seniority being sufficient, make request in writing to the chief dispatcher to be used as an extra train dispatcher as per Rule 13. In filling another temporary vacancy or temporary new position and upon expiration of this temporary vacancy or temporary new position to which he moved, if no other temporary vacancy or temporary new position will be available within two (2) calendar days that he could be called upon as per Rule 13 to protect, he will return to the position that he was formerly on, if his seniority permits.

(c) Changes under this Rule 16 will be made without expense to the Company."

EXCERPTS FROM:
MEMORANDUM OF AGREEMENT
(dated April 12, 1967, effective May 1, 1967)
ANALYSIS OF PROVISIONS FOR PROPOSED
AGREEMENT FOR GUARANTEED DISPATCHER POSITIONS

(1) The Company will establish three (3) Guaranteed Assigned Dispatcher positions in the Central Train Dispatching Office at Houston . . . subject to and thereby advertised pursuant to Rule 15(b) of the schedule agreement as regular assignments.

(2) Guaranteed Assigned Dispatchers will be paid under applicable agreement provisions, with a minimum of five (5) days for each work week Monday through Sunday, in which fully available.

(3) Payment for service shall be in accordance with applicable agreement provisions, except time-and-one half rate shall be payable for either or both the sixth or seventh day of extra work in a work week, but not in the case of the sixth or seventh consecutive day of extra work in the work week when more than one work week is involved.

(4) Incumbents of Guaranteed Assigned Dispatcher positions will be used on the same basis as extra train dispatchers, except the Guaranteed Assigned Dispatchers will be used as senior extra train dispatchers (seniority to prevail as between the incumbents of the three such positions herein provided for), and available Guaranteed Assigned Dispatchers shall be placed on any remaining vacancies in preference to extra train dispatchers; and will retain their status as Guaranteed Assigned Dispatchers even though filling positions bulletined for more than five (5) days.

* * *

ANALYSIS

1. It is our understanding that the proposed guaranteed positions would be bulletined as new positions. Is this correct?

ANSWER: Yes.

2. Would such positions be bulletined as having an assigned work week beginning on Monday and through Sunday of each week?

ANSWER: Yes.

3. It is understood that these positions would be paid for five (5) days, Monday through Sunday even if no service was performed?

ANSWER: Yes.

* * *

8. "A" with a seniority date of January 1, 1960, and "B" with a seniority date of January 1, 1961 are the incumbents of the two guaranteed positions.

"C", "D" and "E" are extra dispatchers, all three of them are senior to "A" and "B". A temporary vacancy arise on the position of Assistant Chief Dispatcher 12:01 A.M. to 8:00 A.M. of 30-days duration or longer account illness of the assigned incumbent. No regular regularly assigned train dispatcher makes application for the temporary vacancy, but "C" who is senior extra train dispatcher desires to assume it.

(1) Can "C" do so? (2) If not, must the senior of the two guaranteed positions assume it?

ANSWER to 1: No.

ANSWER to 2: Yes.

If so, must he remain on it until the assigned incumbent actually reports for his position?

ANSWER: Yes - except as provided in Rule (b)6 of Rule 16.

And during the time "A" is on this temporary vacancy does he assume all the conditions of the position, including assigned weekly rest days?

ANSWER: Yes.

During the observance of the two weekly rest days of the position can "A" be required to perform extra service on another position?

ANSWER: No - except where no other men available.

Would "A" be compensated at the Assistant Chief Dispatcher rate?

ANSWER: Would be paid at the rate of the position which he works. "Guaranteed Time" refers to time paid for on days no service is performed.

9. A three-week temporary vacancy exists on second trick 4:00 P.M. to 12:00 Midnight account the incumbent taking his vacation. At the time the vacancy arise, both "A" and "B", incumbents of the guaranteed positions are performing service on other temporary vacancies, "C", the senior extra dispatcher is working his telegrapher assignment.

Is "C" then entitled to assume the temporary vacancy?

ANSWER: Yes.

Must he do so?

ANSWER: Yes.

After "C" has been on the temporary vacancy three days, "A" finishes service on the position he has been filling and there are no other temporary vacancies.

Can "A" displace "C"?

ANSWER: Yes.

Must he do so?

ANSWER: Yes.

* * *

AGREEMENT
(Dated May 29, 1974)

"An assigned train dispatcher, other than a Guaranteed Assigned Dispatcher protecting extra service, required to work a position other than his regular assignment, shall be compensated therefor at the overtime rate of the position work, except dispatcher, if required to protect trick train dispatcher's positions, shall be at their chief dispatcher's rates; however, except as provided in Rule 22, no additional payment shall be made to such train dispatcher due to not having worked his regular assignment. . ."

On December 19, 1974 a temporary **vacancy** occurred on the first trick Victoria District caused by the dismissal of the former incumbent of that position. Claimant was instructed or assigned on December 18, 1974 to protect that vacancy, and he did so until January 7, 1975. Claimant was then instructed to protect a vacancy on the first trick chief dispatcher's position, Houston District which he did on January 7, 8 and 9, 1975. Claimant was next instructed to protect a second trick HE & WT position on January 10, 11, 12, 13 and 16, 1975 which he did. Claimant was off January 17, 18 and 19, 1975. He was then instructed to perform service on the Houston chief dispatcher's position January 20, 22, 23 and 24, 1975 which he did. Claim was then made for time-and-one half rate each of the days worked January 7 through January 22, 1975, since the first trick vacancy Victoria District to which Claimant was assigned December 19, 1974 ceased to exist after January 22, 1975.

It is the position of the Organization "as it was throughout handling of this dispute on the property, that Carrier violated pertinent provision of the controlling agreements when it did not permit Claimant GAD Brock to remain on the Victoria District vacancy until its termination, and refused to compensate him at the rate of time-and-one half for those days when it required him to perform service on other positions." It being the further contention of the Organization that GAD Brock having been once assigned the Victoria District first trick vacancy that position became his "regular assignment" until the vacancy ceased to exist thus removing him from the wording of the phrase in the May 29, 1974 Letter-Agreement of a "Guaranteed Assigned Dispatcher protecting extra service."

It is the contention and position of the Carrier that a Guaranteed Assigned Dispatcher, protecting extra service, is expressly excluded by agreement from compensation at overtime rates when used on a position other than regular assignment. "A Guaranteed Assigned Dispatcher is a regular assignment, assigned to protect extra work. Even though a 'Guaranteed Assigned Dispatcher' may take a temporary vacancy of five or more days, and takes the condition of that position, he nonetheless remains a Guaranteed Assigned Dispatcher, and automatically reverts to protection of extra service at the end of each assignment. The term 'takes the conditions of the assignment' means the hours, rates of pay, and rest days of the assignment."

The question which this Board must decide is whether under the agreements between the parties as written a "Guaranteed Assigned Dispatcher" is a regularly assigned train dispatcher or if his regular assignment is to protect service of a particular train dispatcher assignment?

The Carrier is particular in reminding us of the limitation of our jurisdiction to the interpretation and application of existing agreements in accordance with reasonable rules of construction. See Third Division Awards 7166, 8538, 8838, 9212, 10585, 16552, 19555 and 21221. The last of which states:

"It is quite apparent that this dispute could be resolved one way based on equity and quite differently based on the rules. This Board's authority, however, is restricted to only construe the rules as agreed to and drafted by the parties."

The parties to the agreement at the time of entering into the basic agreement in 1967 entered into an accompanying agreement which they saw fit to analyze and initial. From this it may be determined that a "Guaranteed Assigned Dispatcher", of which there were to be a maximum of only four whose jobs could not be abolished for six months, who were to be guaranteed pay a minimum of five days in each work week, were to be considered a special category of train dispatcher. Seven years later, in another supplemental Letter-Agreement, May 29, 1974, the GAD is again specialized out:

"An assigned train dispatcher, other than a Guaranteed Assigned Dispatcher protecting extra service, required to work a position other than his regular assignment, shall be compensated therefore at the overtime of the position worked. . ." (Underlining the Board's)

The only precedent cited by the Organization, Third Division Award 5685, Guthrie, (1952), is a case involving regularly assigned train dispatchers and interprets a rule similar to Rule 16 of the Agreement before us but that decision does not disclose any particular supplemental agreement to the Rule or Interpretations of the Rule there being interpreted.

In interpreting these agreements in relation to each other they can best be interpreted that the rights and benefits provided in the supplements for a few, specified employees, under specified circumstances necessarily implies that the specified employees shall have those rights only under those circumstances and not under the language of the basic agreement. See Award 8172, Smith:

"It is a fundamental rule of contract construction that where items intend to be covered thereby are specifically mentioned, all things not specifically mentioned were intended to be excluded."

See also 11165, 13719, 19823. The scheduling was in accordance with the Agreements.

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

The claims are denied.

A W A R D

Claims dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1977.