

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21823
Docket Number TD-21787

James F. Searce, 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, Rules 4 (a), 10 (a) and 10 (b) thereof in particular, when it failed to allow and/or require regularly assigned rest days to be observed and taken and when it refused to compensate Extra Train Dispatcher D. J. Herzog on November 29, 1974 and Extra Train Dispatcher R. E. Gabel on October 12 and November 30, 1974 for being deprived of extra train dispatching work.

(b) The Carrier shall now compensate the individual Claimants as set forth below:

- (1) Claimant D. J. Herzog eight (8) hours at the pro-rata or straight time rate of trick train dispatcher for November 29, 1974.
- (2) Claimant R. E. Gabel eight (8) hours at the pro-rata or straight time rate of trick train dispatcher on each of the applicable claim dates, namely October 12 and November 30, 1974.

OPINION OF BOARD: On October 12, 1974 (Saturday), November 29, 1974 (Friday) and November 30, 1974 (Saturday), the Chief Train Dispatcher at the Carrier's Enderlin, North Dakota, office was off work for vacation or other personal reasons. In his stead, the regularly assigned First Trick Dispatcher (J. O. Van Dusen) was permitted to move up and render relief. Van Dusen's regular days were Sunday through Thursday, inclusive; his assigned rest days were, thus, Friday and Saturday each week. Van Dusen was compensated at the pro rata rate for the position of Chief Train Dispatcher, at that time. (1)

(1) While Van Dusen is not a Claimant in this case at this point, he was originally, based on his demand for payment at the rate for his assigned rest days--the days he performed the duties of Chief Dispatcher cited on this case. That demand was eventually met. Nonetheless, his assignment to the Chief Dispatcher's position has relevance herein and will be discussed further.

The Claimants were extra train dispatchers assigned to the appropriate extra board for that office. Herzog was the senior extra train dispatcher and Gabel the next extra train dispatcher on the Enderlin train dispatching office extra board. There is no question as to Herzog's or Gabel's ability to fill the Chief Train Dispatcher position--both had done so in the past. It is equally unquestioned that the regular dispatcher who did fill the post was qualified to do so.

On the dates in question the Claimants' work statuses were as follows:

Herzog worked as extra train dispatcher on the third trick, beginning work at 12:01 a.m., for both October 12 and November 30; he stood for any extra work on November 29.

Gabel stood as next up for extra work on October 12 and November 30, owing to Herzog's already having been assigned as above.

The Union contends that the Carrier violated the Claimants' rights under the Agreement when it failed to assign them the duties of Chief Train Dispatcher as required under Rule 10 (a) and (b) of the Agreement on the days they were individually standing for the next work up: Herzog on November 29; Gabel on October 12 and November 30. Instead, the Union contends, the Carrier assigned such work to the regular dispatcher on his rest days without showing such assignment was due to an "unavoidable emergency" as permitted under Rule 4 of the Agreement.

Pertinent provisions of such rules are as follows:

Rule 4 - Rest Day

"(a) Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week...."

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...."

"(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 Carrier contends that the position of Chief Train Dispatcher is an official one and, as such, is excepted from the provisions of the Agreement. The Carrier points to Rule 1 (a) as the only provision of the Agreement limiting its right to provide relief for Chief Train Dispatchers due to being absent from their positions, that restriction being that such work "...will be performed by train dispatchers from the office involved, qualified for such work." Having satisfied that provision, the Carrier contends, no other limitation can be effected.

Rule 1 - SCOPE - Paragraph (a) in its entirety reads as follows:

"(a) The term 'train dispatcher' as herein used shall include all train dispatchers except one chief train dispatcher in each dispatching office who is not regularly assigned to perform trick train dispatcher service; however, necessary relief of such chief train dispatchers

"because of absence from their positions, except where appointment of chief train dispatcher is made, will be performed by train dispatchers from the office involved, qualified for such work."

The Union further contends that the Carrier did not raise as a proper defense on the property that the position of Chief Train Dispatchers is not covered by the Agreement and thus cannot be introduced in its ex parte submission to the Board. The Union also claims that the Carrier is in error when it asserts that the position of Chief Train Dispatcher is an official one. It points to the Interstate Commerce Commission's Order of February 5, 1924, which it claims found that Chief Train Dispatchers are not officials, but rather subordinate officials and that the Carrier cannot violate the Commission's Order.

It is clear that the provisions of Rule 1 (a) are central to this matter and a reading of the record indicates the parties on the property recognized it as such. It was raised in Office Chairman Rinowski's October 22, 1974, letter to Superintendent Kemmer (Exhibit 3 of the Union; Exhibit C of the Carrier) and in subsequent communiques between the parties. This Rule is the crux of the Carrier's position; once it satisfies these provisions, the Carrier feels it has met its obligations under the Agreement.

Insofar as the Union's contention that the position of Chief Train Dispatcher is not an official one (pointing to ICC Order No. 72 as a basis for such a claim) a reading of that language does not support its position.

"Train dispatchers. This class shall include chief, assistant chief, trick, relief and extra dispatchers, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control over the movement of trains and related matters, and have substantially the authority of a superintendent with respect to those and other activities. This exception shall apply to not more than one chief dispatcher on any division."

While Order No. 72 delineated those classes of officials who were considered as "subordinate officials" and thus, ultimately subject to the terms of the Agreement between the parties, it did clearly establish exceptions. Nothing in the record disputed that the instant position of Chief Train Dispatcher was not in that excepted class of positions

as defined in the language of the Order. Awards on this Division affirm the Carrier's contention that the position of Chief Train Dispatcher is excepted from the Agreement (e.g. 18070, 9040, 4716). The Carrier is limited, however, to appointing such positions to qualified dispatchers "from the office involved." Van Dusen obviously met this requirement.

Given that the Carrier's obligation extended only to meeting the requirements set out in Rule 1 (a), then it follows that it was not required to adhere to the provisions of Rule 4 (a) insofar as "unavoidable emergencies" is concerned--this assignment being beyond the scope of the Agreement.

What the Carrier was required to do, and did not, in the first instance was to pay the occupant of the position at the appropriate rate for the days worked--in this case being the regularly scheduled rest days for Van Dusen. This discrepancy was eventually corrected, and thus Van Dusen was not a party to this claim.

The record does not support the Union's contention that the rights of the Claimants have been violated by the Carrier's assignment of the duties of Chief Train Dispatcher as was accomplished on the dates referenced herein.

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 Agreement was not violated.

A W A R D

Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1977.