

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23192
Docket Number TD-22893

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(The Atchison, Topeka and Santa Fe Railway Company

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

(a) The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as "the Carrier"), violated the Agreement between the parties to this dispute when, on March 18, 1978, the Carrier instructed and required extra or unassigned train dispatcher O. D. Justus to pass up, and not work, a one day temporary vacancy existing on rest day of Position No. 6509, third trick, Carlsbad-El Paso districts, 11:15 PM Saturday March 18 to 7:15 AM, Sunday March 19, 1978. The Carrier further instructed and required him to wait and protect a later temporary vacancy, first trick, first district, Clovis to Vaughn, 7:15 AM to 3:15 PM, Sunday, March 19, 1978, on Rest Day Relief Position No. 9100. This is in violation of Article II, Section 14.

(b) The Carrier shall be required to compensate regularly assigned train dispatcher J. E. Young, eight (8) hours pay at the time and one-half rate for Sunday March 19, 1978, as the incumbent of first trick, first district, Clovis to Vaughn, 7:15 AM to 3:15 PM, Monday through Friday. He was observing one of his assigned rest days on the day claimed, was rested according to the hours of service, was available and qualified, and should have been used to protect Position No. 9100 under the provisions of Article II, Section 10(b), as amended."

OPINION OF BOARD: J. E. Young was regularly assigned to Train Dispatcher Position 6502, Clovis, New Mexico, 7:15 a.m. to 3:15 p.m., Monday through Friday. Relief Dispatcher Position 9105 protects the position on Saturday and Relief Position 9100 protects it on Sunday. Because Relief Position 9100 was on vacation, there was a temporary vacancy on Sunday, March 19, 1978. In addition, a vacancy occurred on Saturday, March 18; which vacancy is not covered by a relief position, but which is normally covered from the extra board.

Carrier required the regular assigned incumbent of the March 18 position to work (on his rest day) at time and one-half, instead of using the senior unassigned Dispatcher (Justus) to do so, and it used Justus to perform non-Dispatcher duties on the 18th and to fill Position 9100 on the 19th.

The Employees cite Articles II and IV:

"ARTICLE II--SENIORITY

....

Filling Temporary Vacancies

Section 1--b-1. Temporary vacancies of less than ten (10) work days' duration will be filled in the following order of precedence;

- (1)
- (2) By an available unassigned dispatcher not having worked five consecutive work days.
- (3) If the vacancy is due to the absence of relief dispatcher, the regular occupant of the position being relieved may protect the vacancy.
- (4) In the absence of regularly assigned dispatcher, the incumbent of the relief position which furnishes rest day relief, if no conflict with Hours of Service Law.

....

Protection of Seniority

Section 14. Train dispatchers holding rights to other service with the Company, and having once established seniority under this Agreement, must thereafter protect all dispatching service available to them on their seniority district or forfeit such seniority; provided, however, that senior unassigned train dispatchers holding rights to and performing other service who are not located at dispatching headquarters may waive protection of temporary vacancies of less than three (3) days which are available to them when junior qualified unassigned train dispatchers are available at such headquarters...."

"ARTICLE IV--REST DAY RULE

....

Section 7. Regular relief requirements of less than four (4) days per week will be protected by the senior unassigned train dispatcher, who will take the rates, starting times and other conditions except rest days of each position on which relief service is performed."

It is contended by the Employees that there was a violation when Justus was not used to protect the March 18 vacancy. Such use would have then made him unavailable to protect the March 19 vacancy and Young, as the regular incumbent, would have been available.

Carrier has asserted certain "emergency" conditions concerning manpower shortages and has pointed out that the dispatcher manning rules refer to "available" unassigned dispatchers. We are well aware of the many Awards of this Board which have held that reasonably anticipated and predictable manpower shortages do not constitute emergencies, but we do not base our Award on those concepts.

We have studied and re-studied the factual assertions - as they were raised and progressed on the property - in an effort to ascertain if the Employees have set forth a factual basis for the claim. The fact that this claim is premised upon our findings of an asserted violation on the preceding day (in an interrelated fashion) complicates the matter, but certainly does not render it fatal. While we certainly are not precluded from making obvious and valid presumptions, nonetheless, we cannot base an Award on speculation. It is our considered judgment that in order to sustain this claim, it would be necessary for us to make a number of speculations which are not based upon clearly established facts developed prior to submission here. Stated differently, we are unable to conclude that the facts before us necessarily lead to the conclusions urged by the Employees. We will, therefore, dismiss the claim.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.

