

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25456

Docket Number TD-24120

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Chicago and North Western Transportation Company

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

CLAIM #1

Account Chief Train Dispatchers position being blanked on the following dates not in accordance with A.T.D.A. Agreement or any special agreements, by this letter am hereby claiming 1 Days pay at Chief Train Dispatchers rate for the following train dispatchers who were available for work on the following dates when Chief Train Dispatchers position was blanked and position not filled.

DATES

CLAIMANTS

Sat - July 7, 1979	E. C. Hilgendorf, H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, J. T. Ehlers & J. L. Matolek
Sun - July 8, 1979	E. C. Hilgendorf, L. R. Smith, P. J. Rasmusson, J. W. Miller
Wed - July 11, 1979	R. L. Holmgren, J. C. Nondahl, & R. R. Koppelman
Sat - July 14, 1979	E. C. Hilgendorf, H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, J. T. Ehlers & J. L. Matolek
Sun - July 15, 1979	E. C. Hilgendorf, L. R. Smith, P. J. Rasmusson, R. L. Ewert & J. L. Matolek
Sat - July 21, 1979	H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, C. D. Finder, J. T. Ehlers & J. L. Matolek
Sun - July 22, 1979	P. J. Rasmusson, L. R. Smith, J. R. Greene & J. L. Matolek
Sat - July 28, 1979	E. C. Hilgendorf, H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach
Sun - July 29, 1979	E. C. Hilgendorf, L. R. Smith, P. J. Rasmusson, R. L. Ewert, L. L. Nowak & J. L. Matolek

CLAIM #2

Account Chief Train Dispatchers Position being blanked on the following dates not in accordance with A.T.D.A. agreement or any special agreements, by this letter am hereby claiming 1 days pay at Chief Train Dispatchers rate for the following Train Dispatchers who were available for work on the following dates when the Chief Train Dispatchers Position was blanked and position not filled.

DATE	CLAIMANTS
Sat - Aug 4, 1979	E. C. Hilgendorf, H. J. Bloedorn, P. J. Rasmusson, R. L. Graham
Sun - Aug 5, 1979	E. C. Hilgendorf, L. R. Smith, P. J. Rasmusson, J. T. Ehlers
Sat - Aug 11, 1979	E. C. Hilgendorf, H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach & G. R. Mueller
Sun - Aug 12, 1979	E. C. Hilgendorf, L. R. Smith, P. J. Rasmusson, R. L. Ewert, J. L. Matolek
Sat - Aug 18, 1979	E. C. Hilgendorf, H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, J. L. Matolek
Sun - Aug 19, 1979	E. C. Hilgendorf, L. R. Smith, P. J. Rasmusson, R. L. Ewert, R. R. Koppelman, J. L. Matolek
Sat - Aug 25, 1979	E. C. Hilgendorf, H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, G. R. Mueller, J. R. Greene
Sun - Aug 26, 1979	E. C. Hilgendorf, P. J. Rasmusson, R. R. Koppelman, J. R. Greene, J. L. Matolek

CLAIM #3

Account Chief Train Dispatchers Position being blanked on the following dates not in accordance with A.T.D.A. agreement or any special agreements, by this letter am hereby claiming the difference in rate between Chief Train Dispatchers Position and Assistant Chief Train Dispatchers Position for claimant A. J. Troia on the following dates when he was working Assistant Chief Train Dispatchers position and had to absorb the duties of Chief Train Dispatchers Position account being blanked and position not filled.

Sat - July 7, 1979	Sat - July 21, 1979	Sat - Aug 11, 1979
Sun - July 8, 1979	Sun - July 22, 1979	Sun - Aug 12, 1979
Wed - July 11, 1979	Sat - July 28, 1979	Sat - Aug 18, 1979
	Sun - July 29, 1979	Sun - Aug 19, 1979
Sat - July 14, 1979		
Sun - July 15, 1979	Sat - Aug 4, 1979	Sat - Aug 25, 1979
	Sun - Aug 5, 1979	Sun - Aug 26, 1979

CLAIM #4

Account Chief Train Dispatchers position being blanked on the following dates not in accordance with A.T.D.A. agreement or any special agreements, by this letter am hereby claiming 1 days pay at Chief Train Dispatchers rate for the following train dispatchers who were available for work on the following dates when the Chief Train Dispatchers Position was blanked and position not filled.

DATES

CLAIMANTS

Sat - Sept 1, 1979	H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, R. R. Koppelman & J. L. Matolek
Sun - Sept 2, 1979	L. R. Smith, P. J. Rasmusson, R. L. Ewert, R. R. Koppelman & J. L. Matolek
Sat - Sept 8, 1979	H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, R. R. Koppelman, J. R. Green & J. L. Matolek
Sun - Sept 9, 1979	L. R. Smith, P. J. Rasmusson, R. L. Ewert, R. R. Koppelman, J. R. Green & J. L. Matolek
Sat - Sept 15, 1979	H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, J. R. Green & J. L. Matolek

Sun - Sept 16, 1979 L. R. Smith, P. J. Rasmusson, R. L. Ewert,
R. R. Koppelman, J. R. Green & J. L. Matolek

Sat - Sept 22, 1979 H. J. Bloedorn, P. J. Rasmusson, W. F. Reidel-
bach, & J. L. Matolek

Sun - Sept 23, 1979 L. R. Smith, R. L. Ewert, & R. R. Koppelman

Sat - Sept 29, 1979 P. J. Rasmusson, R. L. Graham, W. F. Reidel-
bach, R. R. Koppelman & J. R. Green

Sun - Sept 30, 1979 P. J. Rasmusson & R. L. Ewert

CLAIM #5

Account Chief Train Dispatchers position being blanked on the following dates, not in accordance with A.T.D.A. agreement or any special agreements, By this letter am hereby claiming the difference in rate between Chief Train Dispatchers Position and Assistant Chief Train Dispatchers Position for Claimant A. J. Troia on the following dates when he was working Assistant Chief Train Dispatchers position and had to absorb the duties of Chief Train Dispatchers Position account being blanked and position not filled.

Sat - Sept 1, 1979	Sat - Sept 22, 1979
Sun - Sept 2, 1979	Sun - Sept 23, 1979
Sat - Sept 8, 1979	Sat - Sept 29, 1979
Sun - Sept 9, 1979	Sun - Sept 30, 1979
Sat - Sept 15, 1979	
Sun - Sept 16, 1979	

CLAIM #6

Account Chief Train Dispatchers position being blanked on the following dates, not in accordance with A.T.D.A. agreement of any special agreements, By this letter am hereby claiming the difference in rate between Chief Train Dispatchers position and Assistant Chief Train Dispatchers position for Claimant A. J. Troia on the following dates when he was working Assistant Chief Train Dispatchers position and had to absorb the duties of Chief Train Dispatchers position account being blanked and position not filled.

Sat - Oct 6th 1979	Sat - Oct 20th 1979
Sun - Oct 7th 1979	Sun - Oct 21st 1979
Sat - Oct 13th 1979	Sat - Oct 27th 1979
Sun - Oct 14th 1979	Sun - Oct 28th 1979

In addition, claiming 1 Days pay at Chief Train Dispatchers rate for the following Train Dispatchers on the following dates who were available for work and not called to cover Chief Train Dispatchers Position on the following dates when Chief Train Dispatchers position was blanked and position not filled.

Sat Oct 6, 1979	H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, G. R. Mueller & J. L. Matolek
Sun Oct 7, 1979	J. C. Nondahl, P. J. Rasmusson, R. R. Koppelman, J. R. Greene, & J. L. Matolek
Sat Oct 13, 1979	H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, R. R. Koppelman, J. R. Greene & J. L. Matolek
Sun Oct 14, 1979	J. C. Nondahl, P. J. Rasmusson, R. L. Ewert, R. R. Koppelman, G. R. Mueller & J. L. Matolek
Sat Oct 20, 1979	H. J. Bloedron, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, G. R. Mueller & J. R. Greene
Sun Oct 21, 1979	L. R. Smith, P. J. Rasmusson, R. L. Ewert, & J. L. Matolek
Sat Oct 27, 1979	J. T. Ehlers, P. J. Rasmusson, W. F. Reidelbach & J. L. Matolek
Sun Oct 28, 1979	L. R. Smith, P. J. Rasmusson, R. L. Ewert & J. L. Matolek

CLAIM #7

Account Chief Train Disptchers position being blanked on the following dates, not in accordance with A.T.D.A. agreement or any special agreements, by this letter am hereby claiming the difference in rate between Chief Train Dispatchers position and Assistant Chief Train Dispatchers position for Claimant A. J. Troia on the following dates when he was working Asst Chief Train Dispatchers position and had to absorb the duties of Chief Train Dispatchers position account being blanked and position not filled.

Sat Nov 3, 1979	Sat Nov 17, 1979
Sun Nov 4, 1979	Sun Nov 18, 1979
Sat Nov 10, 1979	Sat Nov 24, 1979
Sun Nov 11, 1979	Sun Nov 25, 1979

In addition claiming 1 days pay at Chief Train Dispatchers rate for the following Train Dispatchers on the following dates who were available for work and not called to cover Chief Train Dispatchers position on the following dates when Chief Train Dispatchers position was blanked and position not filled.

Sat Nov 3, 1979	H. J. Bloedorn, P. J. Rasmusson, R. L. Graham, W. F. Reidelbach, & J. L. Matolek
Sun Nov 4, 1979	L. R. Smith, P. J. Rasmussen, R. L. Ewert
Sat Nov 10, 1979	H. J. Bloedorn, P. J. Rasmussen, R. L. Graham, G. R. Mueller, J. R. Greene & J. L. Matolek
Sun Nov 11, 1979	L. R. Smith, P. J. Rasmussen, R. L. Ewert, J. R. Greene & J. L. Matolek
Sat Nov 17, 1979	P. J. Rasmussen, R. L. Graham, W. F. Reidel- bach & J. L. Matolek
Sun Nov 18, 1979	L. R. Smith, P. J. Rasmussen, R. L. Ewert & J. L. Matolek
Sat Nov 24, 1979	H. J. Bloedorn, P. J. Rasmussen, R. L. Graham, W. F. Reidelbach & J. L. Matolek
Sun Nov 25, 1979	L. R. Smith, P. J. Rasmussen, G. R. Mueller & J. R. Greene

CLAIM #8

- (a) The Chicago & North Western Transportation Company (hereinafter referred to as "the Carrier"), violated and continues to violate its Train Dispatchers' schedule working conditions Agreement, including:

- (1) Rules 5(d), 5(e), 11, 13 and 14(b)(1) thereof, and section 2 of the Memorandum Agreement attached thereto as Appendix "E", when it failed to fill the Chief Train Dispatcher position in its Butler, Wisc. office on the Saturdays and Sundays on and after December 1, 1979 and instead combined that position with the first shift Assistant Chief Train Dispatcher position on such dates; and

- (2) Rules 5(d) and 11 when it failed to compensate Claimant A. J. Troia at the rate of Chief Train Dispatcher position for service performed on the combined Chief Train Dispatcher-First trick Assistant Chief Train Dispatcher position on the shifts referred to in sub-paragraph (1) above.
- (b) Because of said violations the Carrier shall now compensate:
- (1) The Guaranteed Assigned Dispatcher in the Butler, Wis. office, if available, one (1) days compensation at the rate applicable to the Chief Train Dispatchers position, for each shift referred to in sub-paragraph (a)(1) above;
- (2) Claimant A. J. Troia the difference between one (1) days compensation at the rate applicable to the Chief Train Dispatcher position and that previously allowed for each shift referred to in sub-paragraph (a)(1) above.
- (c) In the event the Guaranteed Assigned Dispatcher referred to in sub-paragraph (b)(1) above was (or is) not available for any of the shifts referred to in sub-paragraph (a)(1) above, the claim shall then be payable to the senior qualified extra train dispatcher available at pro-rata rate in the Butler, Wis. office for such shift or shifts.
- (d) In the event neither the Guaranteed Assigned Dispatcher nor any extra train dispatcher is available for any of the shift or shifts under the circumstances described in paragraphs (b)(1) or (c) above the claim shall then be payable in the order set forth in Rule 14(b)(2) of the agreement.
- (e) The respectively eligible individual claimants entitled to the compensation claimed in paragraphs (b)(1), (c) and (d) herein are readily ascertained from the Carriers records and shall be determined by a joint check thereof.

OPINION OF BOARD: Certain operational changes in Carrier's Lake Shore Division resulted in the relocation of dispatching positions from Green Bay, Wisconsin to Butler, Wisconsin. Pursuant to an agreement between the parties involving this relocation, which was effective July 4, 1979, there was also provision for the establishment of a new seven day position at Butler of Assistant Chief Train Dispatcher. There was also a guaranteed assigned dispatcher position at Butler. The Claims herein are for the two relief days of the Chief Dispatcher's position, which were blanked by Carrier since it was Carrier's determination that the position only required five days of activity.

The relevant rules provide as follows:

"RULE 1 - SCOPE

The term 'train dispatcher' as used in this agreement shall include all train dispatchers, excepting only one chief train dispatcher in each dispatching office, who will not be required to perform trick train dispatcher's duties.

The provisions of sections (a), (b), and (c), Rule 5, and Rule 6 of this agreement, will apply to chief train dispatchers."

"RULE 5

(a)-REST DAYS-WORK ON REST DAYS

(Sections (a), (b) and (c) of this Rule 5 applies to Chief Train Dispatchers)

Each regularly assigned train dispatcher will be entitled and required to take two regular 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 days per week.

A regularly assigned train dispatcher who is required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

Extra train dispatchers who are required to work as train dispatcher in excess of five consecutive days shall be paid one and one-half times the basic straight-time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days.

(b) REST DAYS DURATION

The term 'rest days' as used in section (a) of this Rule 5 means that for a regularly assigned train dispatcher seventy-two hours, and for a regularly assigned relief train dispatcher (who performs five consecutive days' train dispatcher service) fifty-six hours, shall elapse between the time he is required to report on the day preceding his rest days and the time he is required to report on the day following his rest days. These definitions of the term 'rest days' will not apply in case of transfers due to train dispatchers exercising seniority.

"NOTE: This Rule 5(b) does not apply to Guaranteed Assigned Dispatchers or to 3 or 4 day assignments under Rule 2(c).

(c) ESTABLISHMENT AND CHANGE OF REST DAYS

Regularly assigned rest days for each position (including the relief dispatcher positions) will be established and no change therein will be made except as a result of increase or decrease in force or by agreement between the Division Manager and office chairman, such agreement to be approved by the officer in charge of Labor Relations and General Chairman.

(d) - RELIEF SERVICE

Where relief requirements regularly necessitate three or four days relief service per week, relief dispatchers will be employed and regularly assigned and compensated at rate applicable to position worked. When not engaged in dispatching service they will be assigned to such other service as may be directed by the proper supervisory officer and will be paid for such service at rate applicable to truck train dispatchers. Each train dispatcher's position as referred to in section (a) of this Rule 5, including chief train dispatchers' positions, will be considered a 'relief requirement', as referred to herein, except as otherwise agreed to between the officer in charge of Labor Relations and General Chairman, train dispatchers' committee.

Note: This Rule 5(d) will not be applicable in offices having a guaranteed assigned dispatcher position.

(e) - COMBINING POSITIONS FOR REST DAY RELIEF

The combining of positions to avoid using relief or extra train dispatchers to provide relief on rest days for established positions will not be permitted except by agreement between Division Manager and office chairman subject to approval of the officer in charge of Labor Relations and General Chairman."

Petitioner contends that the Chief Dispatcher's position, like every other dispatcher position, is considered a "relief requirement" under the provisions of Rule 5(d). According to the Organization, this is reinforced by the provisions of Rule 5(e). Thus, it is argued, on the two rest days of the Chief Dispatcher's position, relief must be provided unless the parties agree otherwise. Petitioner asserts in some of the claims herein that the Assistant Chief Dispatcher had to absorb the work of the blanked Chief Dispatcher's position on certain days, in addition to his own duties. Several Awards were cited in support of Petitioner's position, notably 8910, 11778 and 20002.

Carrier argues that there is no evidence in the record that any of the work normally performed by the Chief Dispatcher was performed by any of the Claimants, including the Assistant Chief Dispatcher. In describing the work of the Chief Dispatcher, Carrier notes that it is uniquely that of an Officer and is primarily administrative in nature. In addition Carrier argues that under the Rules it is not required to furnish relief on the Chief Dispatcher's position. The Carrier notes that neither Rule 5(d) nor 5(e) is applicable in view of the clear and specific provisions of the Scope Rule. Further, Carrier contends that even if Rule 5(d) were applicable it would not be so in this instance since there was a guaranteed assigned dispatcher position in this office meeting the requirements of the Note to Rule 5(d).

The Board finds Carrier's position in this dispute to be persuasive. First it is apparent that there was no evidence adduced to indicate that any of the Chief Dispatcher's work was performed by any of the Claimants, including the Assistant Chief Dispatcher. Thus, the Organization's position must be grounded solely on the contractual provisions. The three cases cited by Petitioner involving related circumstances are not in point since they all deal with trick dispatchers and not Chief Dispatchers as in this dispute.

The Agreement herein provides specifically in Rule 1 (Scope) that "The provisions of sections (a), (b), and (c), Rule 5, and Rule 6 of this agreement, will apply to Chief Train Dispatchers." This proviso, repeated under Rule 5, makes it clear that the provisions of Rule 5(d) and (e) relied on by the Organization are not applicable to this dispute. In Award 17704 this Board stated:

"This Board has repeatedly upheld Carrier's right to blank positions when the incumbent of a position is not available, except when an Agreement rule expressly guarantees that such position be worked...."

In this dispute we can find no rule support for Petitioner's position and no evidence that any of the functions of the Chief Dispatcher (largely Officer's activities) were performed by any of the Claimants. For the reasons indicated, the Claims must be denied.

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 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

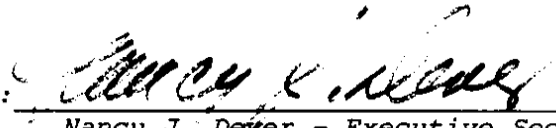
That the Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois this 23rd day of May 1985.

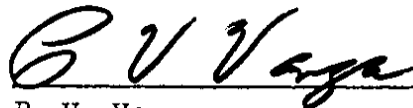
CARRIER MEMBERS' CONCURRING OPINION
TO
AWARD 25456 (DOCKET TD-24120)
Referee Lieberman

There is nothing in the Labor Member's Dissent that points out any error in Award 25456.

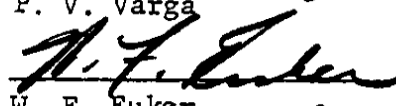
However, the Dissent ignores the very clear language of the second paragraph of the Scope Rule and the preface to Rule 5, quoted at Page 8 of the Award, that applies only Paragraphs (a), (b) and (c) to the chief train dispatcher position. To contend that the provisions of Rule 5(d) and (e) equally apply to chief train dispatcher positions because they are included in the generic term "train dispatcher" ignores the clear language adopted by the parties. Such argument also ignores the many decisions supporting contract language that the position of chief train dispatcher is different from trick train dispatcher positions.

The contention that "relief requirements depend solely on the number of positions to be relieved, without regard to the needs of the service," ignores reality and the fact that a guaranteed assigned dispatcher position had been established for "(w)hen relief requirements....." were needed.


The Award is correct and the Dissent does not substantiate any error.



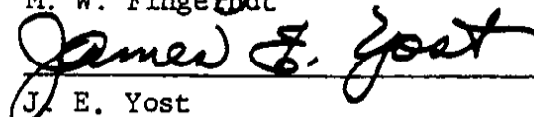
P. V. Varga



W. F. Euker



M. W. Fingerhut



J. E. Yost

LABOR MEMBER'S ANSWER
to Carrier Members' Concurring Opinion to
Award 25456 (Docket TD-24120)
Referee Lieberman

It is regrettable that the Carrier Members, in their zeal to rebut the Labor Member's Dissent to Award 25456, found it necessary to utilize wording which falls somewhat short of the exact truth. It is also perplexing, since the correct facts are in plain sight of one who possesses, as a minimum, average grammar school reading skills.

The undersigned writer is referring to the statement:

"However, the Dissent ignores the very clear language of the second paragraph of the Scope Rule and the preface to Rule 5, quoted at Page 8 of the Award, that applies only Paragraphs (a), (b) and (c) to the chief train dispatcher position."

The second paragraph of the Scope Rule (Rule 1) and the preface to Rule 5, do not use the four words attributed by the Carrier Members, "chief train dispatcher position". Plainly, these Rules do use the three words, "chief train dispatchers". The Labor Member's Dissent was designed to demonstrate the majority's misapprehension of the critical distinction between the quoted terms.

In the third paragraph of their Concurring Opinion, the Carrier Members argue that the contention that "relief requirements depend solely on the number of positions to be relieved, without regard to the needs of the service", ignores reality. These quoted words are almost the exact words appearing in the Board's Opinions in both Awards 8910 and 11778, varying only in use of synonyms or syntax, but not in meaning. That is the reality.

As for the third paragraph reference to a guaranteed assigned dispatcher position, since that issue was not addressed by the majority in Award 25456, it seems out of place and therefore merits no consideration. We deduce the reference is there to serve their purposes in similar disputes waiting in the wings. That's just an attempt to put another patch on a leaky vessel, for Award 25456 has no more value as precedent than a foundering houseboat's capacity to salvor a capsizing supertanker.



R. J. Irvin, Labor Member

July 11, 1985