

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25883
Docket Number TD-25470

Lamont E. Stallworth, Referee

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

STATEMENT OF CLAIM:

"Claim # 1 - Carrier file 82-4-4

(a) The Chicago & North Western Transportation Company (hereinafter referred to as the 'Carrier') violated its Train Dispatchers' schedule working conditions Agreement, including Rules 5(a), 5(d) and 14(b)(1) thereof, when it failed to separately fill the Chief Train Dispatcher position in the Mason City, Iowa office on the Saturdays and Sundays weekly rest days of said position on Saturday Aug 21, 1982 and Sunday Aug 22, 1982 Saturday Aug 28, 1982 and Sunday Aug 29, 1982.

(b) Because of said violations, the Carrier shall now compensate, in addition to any and all other compensation they may have, the senior qualified extra Train Dispatcher available, or who could have been made available in the Mason City, Iowa office at the starting time of the Chief Train Dispatcher position referred to in paragraph (a) above, one (1) day's compensation at the rate applicable for relief of said Chief Train Dispatcher for each of the dates referred to in paragraph (a) above.

(c) In the event no qualified extra Train Dispatcher is available for any of the shifts referred to in paragraph (b) above, the claim shall then be payable in the order set forth in Rule 14(b)(2) of the Agreement.

(d) The identities of the individual Claimants entitled to the compensation claimed in paragraphs (b) and/or (c) above are readily ascertainable from the Carrier's records and shall be determined by a joint check thereof, in order to avoid the necessity of presenting a multiplicity of individual claims.

Claim # 2 - Carrier file 82-4-4

(a) The Chicago & North Western Transportation Company (hereinafter referred to as the 'Carrier') violated its Train Dispatchers' schedule working conditions Agreement, including Rules 5(a), 5(d) and 14(b)(1) thereof, when it failed to separately fill the Chief Train Dispatcher position in the Mason City, Iowa office on the Saturdays and Sundays weekly rest days of said position on Sept 4, Sept 5, Sept 11, Sept 12 Sept 18, Sept 25 and Sept 26, 1982.

(b) Because of said violations, the Carrier shall now compensate, in addition to any and all other compensation they may have, the senior qualified extra Train Dispatcher available, or who could have been made available in the Mason City, Iowa office at the starting time of the Chief

Train Dispatcher position referred to in paragraph (a) above, one (1) day's compensation at the rate applicable for relief of said Chief Train Dispatcher for each of the dates referred to in paragraph (a) above.

(c) In the event no qualified extra Train Dispatcher is available for any of the shifts referred to in paragraph (b) above, the claim shall then be payable in the order set forth in Rule 14(b)(2) of the Agreement.

(d) The identities of the individual Claimants entitled to the compensation claimed in paragraphs (b) and/or (c) above are readily ascertainable from the Carrier's records and shall be determined by a joint check thereof, in order to avoid the necessity of presenting a multiplicity of individual claims.

Claim # 3 - Carrier file 82-4-5

(a) The Chicago & North Western Transportation Company (hereinafter referred to as the 'Carrier') violated its Train Dispatchers' schedule working conditions Agreement, including Rules 5(a), 5(d) and 14(b)(1) thereof, when it failed to separately fill the Chief Train Dispatcher position in the Mason City, Iowa office on the Saturdays and Sundays weekly rest days of said position on Oct 2, 3, 9, 10, 16, 17, 23, 24, 30 and 31, 1982.

(b) Because of said violations, the Carrier shall now compensate, in addition to any and all other compensation they may have, the senior qualified extra Train Dispatcher available, or who could have been made available in the Mason City, Iowa office at the starting time of the Chief Train Dispatcher position referred to in paragraph (a) above, one (1) day's compensation at the rate applicable for relief of said Chief Train Dispatcher for each of the dates referred to in paragraph (a) above.

(c) In the event no qualified extra Train Dispatcher is available for any of the shifts referred to in paragraph (b) above, the claim shall then be payable in the order set forth in Rule 14(b)(2) of the Agreement.

(d) The identities of the individual Claimants entitled to the compensation claimed in paragraphs (b) and/or (c) above are readily ascertainable from the Carrier's records and shall be determined by a joint check thereof, in order to avoid the necessity of presenting a multiplicity of individual claims.

Claim # 4 - Carrier file 82-4-6

(a) The Chicago & Northwestern Transportation Company (hereinafter referred to as the 'Carrier') violated its Train Dispatchers schedule working conditions Agreement, including Rules 5(A), 5(D) and 14(B)(1) thereof, when it failed to separately fill the Chief Train Dispatcher position in the Mason City, Iowa office on the Saturdays and Sundays weekly rest days of said position on November 6, 7, 13, 14, 20, 21, 27 and 28, 1982.

(b) Because of said violations, the Carrier shall now compensate the respective Train Dispatchers named below, in addition to any and all other

compensation the may have, one (1) day's pay at the rate applicable for relief of the Chief Train Dispatcher in the Mason City, Iowa office, for the claim dates indicated:

B. J. Fredrickson	Saturday Nov 6, 1982
B. J. Fredrickson	Sunday Nov 7, 1982
W. L. Miller	Saturday Nov 13, 1982
B. J. Fredrickson	Sunday Nov 14, 1982
W. L. Miller	Saturday Nov 20, 1982
W. L. Miller	Sunday Nov 21, 1982
W. L. Miller	Saturday Nov 27, 1982
W. L. Miller	Sunday Nov 28, 1982."

OPINION OF BOARD: The instant case is substantially similar to Third Division Award Number 25456, involving the same representing parties and issues, but different claimants. The disputes deal with whether Chief Train Dispatcher positions must be filled on rest days even if Carrier finds no need for the service.

The Organization claims in its arguments that the previous Award does not differentiate between the "person" of a given Chief Train Dispatcher and the "position" of Chief Train Dispatcher. The Board finds that this distinction is more "nice" than "real". The Rules for filling positions must describe positions rather than employees. Yes, employees fill the positions, but only if the positions are available. The Board does not read such distinctions into the Rules and must agree with the principles set forth by this Board.

The claim is without merit.

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 not violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.

LABOR MEMBER'S DISSENT
to Award 25883 - Docket TD-25470
Referee Stallworth

The Labor Member's Dissent to Award 25456 is equally applicable to Award 25883 and is incorporated herein by reference.

In its submission in Docket TD-25470, the Carrier advanced an additional argument, that Rule 5(d) does not apply to the Chief Train Dispatcher, which it characterizes as an "official position".

A distinction must be made between the Chief Train Dispatcher's person and the Chief Train Dispatcher's position. Numerous Awards have made that critical distinction clear:

Third Division Award 2943 (Edward F. Carter):

" . . . so long as the chief dispatcher's position is occupied, the occupant of the position only is excepted from the agreement and any employe relieving him for any cause would be subject to the provisions of the Agreement. . . ."

Third Division Award 5371 (Alex Elson):

" . . . we have held in numerous awards that only the occupant of the position of Chief Train Dispatcher is excepted from the agreement and any employe relieving him for any cause would be entitled to the benefits of the agreement."

Third Division Award 7914 (Dwyer W. Shugrue):

" . . . only the occupant of the position of Chief Train Dispatcher is excepted from the Agreement and any employe relieving him for any cause would be entitled to the benefits of the Agreement. . . ."

Third Division Award 9040 (Francis B. Murphy):

"There can only be one Chief Train Dispatcher in each dispatching office and he is the only dispatcher who is excepted from the Scope Rule. . . ."

Award No. 1 - Special Board of Adjustment No. 881 (J. A. Sickles):

"While the matter may be difficult of resolution, the controlling issue is simply stated. 'Is the position excepted from coverage - or merely the man?'

. . . .

Although we concur that the matter may not be totally free from all doubt and that reasonable minds may very well differ, it is our conclusion that the evidence preponderates to the benefit of the Organization, in that we find that the agreement more clearly supports the proposition

Labor Member's Dissent to Award 25883, continued

that individual people may be excluded; but not the position. In reaching our conclusion, we have recognized the concept that collectively bargained rules agreements speak in terms of positions rather than people and the pertinent language before us confirms that such was the intention of the authors of the rules agreement pertinent to our determination. In this regard, we note that the agreement excludes '...one chief train dispatcher...' on each division - not one chief train dispatcher 'position.'

Similar holdings will be found in Third Division Awards 2986, 3096, 3344, 4012, 5975, 11560, 18070, 23278, and 23606.

We thus see that this distinction is pivotal. Rule 1 excepts only one Chief Train Dispatcher from the agreement's coverage, provided, however, that Rule 5(a), (b), and (c) and Rule 6 shall apply. In this respect we are now addressing the person of the Chief Train Dispatcher, an identifiable individual.

The parenthetical expression at the beginning of Rule 5 -- "(Sections (a), (b) and (c) of this Rule 5 applies to Chief Train Dispatchers)" -- speaks of Chief Train Dispatchers, not positions, again, the persons.

It is therefore crucial that the terminology of Rule 5(d) be considered:

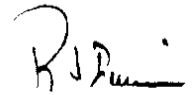
"... Each train dispatcher's position as referred to in section (a) of this Rule 5, including chief train dispatchers' positions, will be considered a 'relief requirement', as referred to herein, . . ." (Underscoring mine)

This rule addresses positions, not persons. The distinction should have been clear to the majority. The Carrier was patently in error when it stated, "The rule does not require that relief be established on Chief Dispatcher positions". Because the Chief Train Dispatcher's person is subject to certain rules and not to others has no significance as regarding application of other rules to his position.

The Chief Train Dispatcher's position is a "relief requirement". To hold otherwise is to perpetuate the errors manifest in Award 25456.

Labor Member's Dissent to Award 25883, continued

The majority does not heap credit upon itself when it perfunctorily characterizes this critical distinction as "more 'nice' than 'real'."



R. J. Irvin
Labor Member