

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26168
Docket Number TD-26112

John E. Cloney, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Maine Central Railroad Company

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

(a) The Maine Central Railroad Company (hereinafter referred to as 'Carrier'), violated the effective Agreement between the parties, Article IV: Section E and Article X: Section E therefore [sic] in particular, when it called and used a junior extra train dispatcher instead of Claimant R. A. Prevost, who was available and willing to perform the extra train dispatcher service on Monday April 4, 1983.

(b) For the above violation, the Carrier shall now compensate Claimant Extra Train Dispatcher R. A. Prevost one day's compensation at the pro rata rate applicable to trick train dispatcher for Monday, April 4, 1983."

OPINION OF BOARD: Claimant has a regularly assigned Crew Dispatcher position under a BRAC Agreement. When the Claim arose his scheduled hours in that position were 9:00 P.M. to 6:00 A.M. He is also an Extra Train Dispatcher under the ADTA Agreement, and, in fact, is first in that category.

On Sunday, April 3, 1983, Claimant requested a vacation day on April 5, 1983. This was granted. He also said he would not be available for any second trick (3:00 P.M. - 11:00 P.M.) work as an Extra Train Dispatcher during the week of April 4, 1983, but would be available for third trick Train Dispatcher's assignment on April 6, 1983.

At about 8:15 P.M. on April 4, 1983, Carrier learned it would need an extra Train Dispatcher for the third shift (11:00 P.M. - 7 A.M.) that night. A. J. Reid, a junior Extra Train Dispatcher, was called.

Pertinent portions of the Agreement provide:

"Article IV(e)

Relief requirements of less than four days per week will be performed by Extra Dispatchers who will be paid the daily rate of each Train Dispatcher relieved."

* * *

"Article X(e):

In filling vacancies seniority will be observed, subject to fitness and ability; the Superintendent to be the judge of fitness and ability, subject to appeal."

On April 11, 1983, the General Superintendent wrote Claimant, declining his Claim because:

"Your claim for day's pay at Train Dispatcher's rate is declined for Monday, April 4, 1983. You requested vacation for Tuesday, April 5. The job you make claim for works from 12:01 A.M. until 7:00 A.M. on April 5. When one is on vacation, one cannot be considered for spare work when others are available. Perhaps you forgot you were on vacation that day."

Carrier argues seven of the hours claimed fall in a day for which Claimant had been granted vacation and further, Claimant had not been at work on his regular assignment prior to the vacancy. Carrier contends that given the fact Claimant works under two separate Agreements the confusion caused by his vacation request led it to a logical belief that Claimant did not wish to be called for the assignment.

This Board must agree with the Organization that Claimant's request for a vacation day to begin at 9:00 P.M. on April 5, 1983, did not render him unavailable for an assignment which was to begin at 11:00 P.M. on April 4, 1983, even though such shift would run several hours into April 5, 1983. Similarly, his statement that he would not be available for second shift assignments during the week of April 4, 1983, does not constitute a waiver of any right he might have to be called for third shift assignments, especially in view of his saying he would work third shift on April 6, 1983.

The General Chairman contended the Chief Dispatcher phoned Claimant once on April 4, 1983, received a busy signal, and then called the junior man. This contention is undenied. Numerous Third Division Awards, including 23561, 22422 and 22217 hold that one call does not constitute sufficient effort to reach an employee.

We conclude Claimant was entitled by the terms of the Agreement to be called and was not.

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 Employes involved in this dispute are respectively Carrier and Employes 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

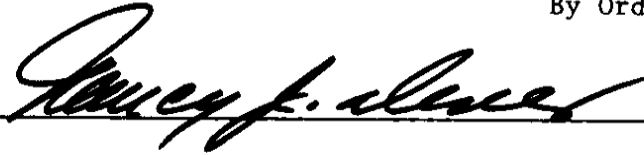
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1986.