

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29345  
Docket No. TD-29770  
92-3-91-3-140

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(CSX Transportation, Inc. (former Seaboard System  
( Railroad Company

STATEMENT OF CLAIM:

"(A) CSX Transportation, Inc. (Carrier) violated Article 5 (I) (Order of Call) of its train dispatcher's basic Schedule Agreement applicable in the Jacksonville Centralized Train Dispatching Center on March 19, 1990., when it failed to call regular assigned second trick Train Dispatcher Mr. J. G. Lachaussee for overtime on his rest day.

(B) Because of said violation, the Carrier shall now compensate Claimant J. G. Lachaussee for eight (8) hours pay for lost work opportunities applicable to the Jacksonville Centralized Train Dispatchers rate of pay of \$165.00 for March 19, 1990."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On date of Claim, Claimant was observing the rest day of his regular assignment. A vacancy occurred on this position, and Carrier used Dispatcher J. K. Fellure from the Extra Board to fill the vacancy. Because Fellure was being withheld from a position to which he had exercised his seniority, he was compensated at a rate one and one-half times the regular rate of pay.

The essential facts in this case are not in dispute. At the time this vacancy occurred, there were no Dispatchers available to fill the job at the straight time rate of pay. Fellure had not yet worked five days in his workweek. Claimant had filed a letter indicating he desired to protect extra service on his rest days. Finally, Claimant is senior to Fellure.

The Organization asserts Claimant had a preferential right to be called for the vacancy under Article 5(i) - Order of Call, which reads, in pertinent part, as follows:

"When a vacancy exists for train dispatching service and there are no train dispatchers available at the straight time rate of pay vacancies will be filled as follows:

First      Call the regularly assigned train dispatcher who is on his rest day and who is regularly assigned to the position on which the vacancy occurs.

\* \* \*

Fourth     Call the senior qualified extra train dispatcher who is available under the Hours of Service Act.

In the application of the First, Second, and Third Order, only those regularly assigned train dispatchers who file a letter with the Excepted Chief Dispatcher that they desire to protect extra service on their rest days will be called for such service."

Carrier argues Article 5(i) was not intended to operate in such a way that Fellure would not be called under these circumstances, as he was assigned to the appropriate Extra Board designed to protect vacancies such as this, and he had not yet worked five days. Carrier notes Fellure was compensated in accordance with Article 2(f) - Off-Assignment Work, which reads, in part, as follows:

"A train dispatcher holding a regular assignment who is required to fill an assignment other than that obtained in the exercise of seniority shall be compensated at one and one-half (1 1/2) times the rate applicable to the assignment filled.  
. . ."

Although the amounts are the same, Carrier characterizes Fellure's rate as a penalty rate rather than an overtime rate. It asserts Article 5(i) was intended to apply only when the vacancy must be filled at the overtime rate. Finally, Carrier suggests the Organization's interpretation would result in Fellure never being called for service, which it states is nonsensical and contrary to the main purpose of holding an employee on a position as contemplated by the Agreement.

While Carrier's argument goes to the intent of the Rule and the equity as to its effect upon Fellure, this Board cannot look behind clear and unambiguous language in the Agreement, nor are we charged with deciding disputes on an equitable basis. We must interpret the Agreement as written by the parties, and we may not amend or alter it. If the parties had intended Article 5(i) to apply when there were Dispatchers who had not worked five days or were not being paid at the overtime rate, they could have written the Rule in such a manner. But they did not, and we must decide this matter based upon what the Agreement does say.


Article 5(i) dictates the manner of filling vacancies when "there are no train dispatchers available at the straight time rate of pay." While we agree with Carrier that Fellure was not compensated at the overtime rate of pay, we note Carrier's submission refers to Fellure being paid at a "penalty rate." This is a rate other than the straight time rate of pay. Fellure, therefore, was not available at the straight time rate of pay. Accordingly, in the absence of any other Dispatchers being available at the straight time rate, Claimant should have been called to fill the rest day vacancy on his position. We will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.