

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29719
Docket No. TD-30235
93-3-91-3-692

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
(
(Duluth Missabe and Iron Range Railway
(Company

STATEMENT OF CLAIM:

- "(a) The Duluth Missabe and Iron Range Railway (Carrier) violated its Train Dispatchers' schedule working conditions Agreement, including Rule 8 thereof, when, commencing July 2, 1990 and continuing each day thereafter, it permitted and/or required an employee (M. J. Urie) not covered by said schedule Agreement to fill the Chief Train Dispatcher Position, Relief Chief Dispatcher position and assume the duties thereof.
- (b) Because of said violation the Carrier shall now compensate the senior qualified Train Dispatcher available at the appropriate rate.
- (c) In the event no qualified Train Dispatcher is available as setforth [sic] in paragraph (b) above, the claim is made on behalf of the senior regularly assigned Train Dispatcher on duty, in addition to any other earnings for such date or dates.
- (d) The identities off [sic] the individual Claimants eligible for the compensation claimed herein are readily ascertainable from the Carrier's records on a continuing basis, and shall be determined by a joint check thereof in order to avoid the necessity of presenting a multiplicity of daily claims."

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 employe 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.

All of Carrier's Train Dispatchers are headquartered at Keenan, Minnesota, a station located at the north end of its system near Iron Range taconite producers and shippers. Dispatchers historically have been supervised by a Chief Train Dispatcher, promoted from the ranks of Train Dispatchers and holding seniority as such. Upon the retirement of an Assistant Superintendent in May, 1982, the then Chief Train Dispatcher assumed some of the operational and maintenance functions previously performed by the Assistant Superintendent's position, and performed them along with his Chief's duties. When the Chief Train Dispatcher retired in July, 1990, an appointment was not made to the vacancy from the Dispatcher's roster. Instead, Carrier appointed an Assistant Superintendent, placed him in the dispatching office and had him perform the same duties as previously performed by the retiring Chief, including supervision of the dispatching office.

The Organization filed this Claim contending that the replacement of a Chief Train Dispatcher with an Assistant Superintendent and having the replacement perform the duties of the Chief violated Rule 8 of its Agreement, which requires that any permanent appointment of a Chief Train Dispatcher must be made from Dispatchers holding seniority.

Carrier denied the Claim on the grounds that it elected not to fill the vacancy in the fully excepted position of Chief Train Dispatcher, Rule 1 of the Agreement neither requires that the position be filled nor does it define the duties of the position, the greatly expanded role of the former occupant subsequent to May 1982 did not vest the Organization with entitlement to the duties performed by that individual, and the Assistant Superintendent is not now performing duties which are exclusively reserved to Dispatchers under the Agreement.

Rules 1 and 8, relied on by the parties provide:

"RULE 1

Scope

- (a) The rules of this agreement shall govern the hours of service, compensation and working conditions of train dispatchers. The term 'train dispatcher' as used in this

agreement shall include all train dispatchers, excepting only one chief train dispatcher in each dispatching office.

DEFINITIONS:

NIGHT CHIEF DISPATCHER,
ASSISTANT CHIEF DISPATCHER

1. These classes shall include positions in which the duties of incumbents are to be responsible for the movement of trains on a division or other assigned territory, involving the supervision of train dispatchers and other similar employees; to supervisor the handling of trains and the distribution of power and equipment incident thereto; and to perform related work.

TRICK, RELIEF AND EXTRA TRAIN DISPATCHERS

2. This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces in handling train orders; to keep necessary records incident thereto; and to perform related work.

CENTRALIZED TRAFFIC CONTROL

- (b) Centralized traffic control machines at present in service, and in future installed, will be manned and operated by train dispatchers when such machines are located in offices where train dispatchers are now, or in future may be employed. When a centralized traffic control machine is not located in an office where train dispatchers are employed and it is manned and operated by other employes, a train dispatcher shall have and exercise control and direct all train movements in such

territory."

"RULE 8

Chief Dispatcher Relief

A weekly rest day shall be assigned to each excepted chief train dispatcher position as a part of the weekly schedule of work for any train dispatcher assignment.

Relief of excepted chief train dispatchers for their annual vacation, and other temporary periods of absence from their positions, shall be made by qualified train dispatchers from the seniority district involved.

Any permanent appointment to the position of excepted chief train dispatcher shall be made from train dispatchers holding seniority as such. The Carrier shall be the sole judge as to selection.

An employee who relieves the Chief Dispatcher for any reason shall be compensated at a flat rate of \$65.58 per day as of October 1, 1971, subject to any future general wage increases applicable to train dispatchers."

Carrier argues that the Scope Rule is general in nature and that the expanded role of the former Chief Train Dispatcher did not vest the Organization with the exclusive right to perform the duties of that individual. The Board agrees that the Scope Rule of the Agreement does not place any of the duties of the Chief Train Dispatcher under coverage of the Agreement. But that is not the answer in this matter. The Scope Rule exempts from coverage one Chief Train Dispatcher in each dispatching office. In exempting one Chief Dispatcher position in each office the Rule also obviously exempts all of the duties, work and functions performed by the Chief, as work is the essence of positions.

The fact, though, that the position and work of Chief Dispatcher is exempt from the Agreement, by the language of Rule 1, does not mean that Rule 8 is inoperative. Rule 8 requires that any permanent appointment to the Position of Chief Train Dispatcher be made from among Train Dispatchers holding seniority as such. Rule 8 further provides that the Chief Train Dispatcher will be assigned one rest day each week and that relief for that rest day, as well as annual vacations and other absences, will be made from qualified Train Dispatchers from the seniority district involved. This

language is operative even though the position is exempt and even though the work and duties of the position are exempt.

Accordingly, the question before the Board is not whether the work that is now being performed by the Assistant Superintendent is work subject to the scope of the Dispatchers' Agreement but whether the Assistant Superintendent is really functioning as a Chief Train Dispatcher, but only under a different title. If the latter situation is the case, then the source of the position must be from Dispatchers holding seniority under the Agreement.

Both parties acknowledge that the Dispatcher's Agreement does not define duties and responsibilities for the Chief Train Dispatcher, as it does for other positions. When an agreement is silent on a matter such as this, it is then necessary, under well defined tenets of contract interpretation prevailing in this industry, to look to the parties usage, custom and practice, for a definition. In examining usage, custom and practice it is apparent that immediately subsequent to the Chief Train Dispatcher's retirement most if not all of his duties were shifted to the newly created position of Assistant Superintendent. At that time, Carrier shifted those traditional Chief Train Dispatcher duties and responsibilities performed by the occupant of that position for many years to the Assistant Superintendent. At that time Carrier also shifted certain non-traditional Chief Train Dispatcher duties to the Assistant Superintendent. There is no time breakdown between the traditional Chief duties and the non-traditional duties but the factual situation is that while the Assistant Superintendent took back the non-traditional Chief Train Dispatcher duties conveyed on the Chief subsequent to May, 1982 he also took over the traditional Chief Train Dispatcher duties which had historically been the Chief's responsibility.

The Board finds the Organization's proof persuasive on this point. It has demonstrated that a variety of duties once performed by the Chief Train Dispatcher are now being performed by the Assistant Superintendent. Carrier's defense was misdirected. It admitted that these functions have been taken over by the Assistant Superintendent, but contended that was not material because the work was not exclusively under the Agreement. Carrier was obviously free to eliminate the Assistant Superintendent's position in 1982 and combine his duties with the Chief Train Dispatcher. However, it cannot avoid the requirements of Rule 8 and eliminate the Chief Train Dispatcher's position and combine the duties with that of another official.

When the Chief Train Dispatcher retired in July, 1990, the work of the position did not disappear. It continued to be performed thereafter by the newly created position of Assistant Superintendent. In effect what occurred was the permanent

appointment of an individual who did not hold seniority as a Train Dispatcher to the position of excepted Chief Train Dispatcher, but only under a different title. This action is at odds with the requirements of Rule 8.

In reaching this decision the Board wants it clearly understood that it is not for a moment suggesting that the work of the Chief Train Dispatcher in either its traditional role, its expanded non-traditional role, or a combination of both roles, is being placed under the Scope of the Dispatchers' Agreement. As stated above, the Scope Rule exempts Chief Train Dispatchers from the Agreement. However, Rule 8, requires, even though the position is exempt, that permanent appointments to Chief Train Dispatcher be made from Dispatchers with seniority as Dispatchers. Carrier has agreed with the Organization that its Chief Dispatchers will be drawn from the ranks of Dispatchers. When it made this agreement it knew what the duties and responsibilities of the Chief Dispatcher were and that these duties and responsibilities were exempt from the Agreement, yet it agreed that Dispatchers would be the sole source of supply for permanent appointment to the position. When it expanded the responsibility of the Chief Dispatcher subsequent to May, 1982, it did so knowing that it was obligated, by the language of Rule 8, to use Dispatchers with seniority as Dispatchers as the source to fill Chief Train Dispatcher vacancies. It cannot circumvent this obligation by merely changing the title of the position to Assistant Superintendent and having the Assistant Superintendent perform the same duties as the Chief Train Dispatcher previously performed.

Accordingly, the Board concludes that Rule 8 was violated when Carrier changed the title of the Chief Train Dispatcher at Keenan to that of Assistant Superintendent and had the Assistant Superintendent fulfill the duties formerly the responsibility of the Chief Train Dispatcher and the assignment was not filled by a Dispatcher holding seniority as Dispatcher.

The Organization has asked as a remedy that the senior qualified Train Dispatcher be compensated at the appropriate rate for each day subsequent to July 2, 1990. The Organization is not entitled to this relief in this form. The position of Chief Train Dispatcher and the work of the position are exempt from the Agreement. The Organization is entitled to have a Dispatcher with seniority appointed to the position. The individual, after appointment would not be subject to the provisions of the Dispatcher's Agreement, with respect to wages, etc. Thus, the Organization is not entitled to relief predicated on the basis that its members lost work opportunities because of the appointment of an individual without Dispatcher seniority to a position actually performing the duties of the Chief Train Dispatcher.

The injury here to the Organization is the lost opportunity to provide relief for the Chief on one day per week, and for vacations and other absences, as provided in Rule 8. Notwithstanding what was decided in Third Division Award 28133, a fair reading of Rule 8 contemplates that a weekly rest day will be assigned to the Chief Train Dispatcher which rest day will be a part of the weekly schedule of a Train Dispatcher assignment. When Carrier changed the title of the Chief Train Dispatcher to that of Assistant Superintendent it deprived the Organization of this work opportunity. Accordingly, eligible Dispatchers are entitled to recovery of this lost work opportunity. Additionally, Dispatchers lost the opportunity to provide relief for annual vacations and other absences during this time.

Therefore the Board will allow one days pay per week, plus time for annual vacations and other temporary absences, whatever they may have been, to be paid to the senior qualified Dispatcher, as determined by a check of Carrier records.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.

LABOR MEMBER'S CONCURRING
and
DISSENTING OPINION
to
THIRD DIVISION AWARD NO. 29719, DOCKET TD-30235
(Referee Fletcher)

Naturally, on most points, enthusiastic concurrence is registered to the findings of Third Division Award No. 29719.

The Board easily saw through the Carrier's double-speak in concluding "...Rule 8 was violated when Carrier changed the title of the Chief Train Dispatcher at Keenan to that of Assistant Superintendent and had the Assistant Superintendent fulfill the duties formerly the responsibility of the Chief Train Dispatcher..."

As a bonus, the Board properly repudiated the erroneous findings of Award No. 28133 regarding relief of the Chief Train Dispatcher during temporary vacancies as well as on its weekly rest day. The Board correctly held that the weekly rest day must be assigned to the weekly schedule of a train dispatcher's assignment.

However, this writer finds it necessary to part company with the findings of the Award on two specific issues;

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LM's Concurrence &
Dissent Award No. 29719

- 1) The repeated references to the position and work of the Chief Train Dispatcher being exempt from the Agreement.
- 2) The Board's remedy.

Issue No. 1

Over the years, this Board has issued a series of awards analyzing similar scope provisions. These awards establish substantial arbitral precedent regarding the distinction between the position of the Chief Train Dispatcher and the occupant of the Chief Train Dispatcher's position.

For example, in Third Division Award No. 11560 the Board held:

"It is true that the Agreement does not cover wage rates or working conditions of Chief Dispatchers. They are generally outside the Scope of that Agreement. We have held, however, that only the occupant of the position of Chief Dispatcher is excluded... [emphasis added]

Subsequent awards have held similarly.

Third Division Award No. 18070

"There is a long line of awards by this Board holding that although the occupant of the position of Chief Dispatcher is excepted from the schedule agreement, Train Dispatchers relieving him are entitled to all of the of the Agreement..." [emphasis added]

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Third Division Award No. 23606

"This same question was recently decided by this Board in Award 23278 in a case involving the same parties. There, the Board decided 'only the incumbent is excluded from the provisions of the Agreement and not the position.'

This Board has for many years followed the doctrine of res judicata...

Thus, the position of Chief Dispatcher is exempt from the Agreement only when the incumbent is in the position... When the incumbent is absent the position is covered by the Agreement." [emphasis added]

Third Division Award No. 23278

"We have reviewed the many awards cited by the parties and have concluded that although there is not complete unanimity, the prevailing view by far is that the exception applies only to the person assigned to the position and not to the position itself.

We, therefore, conclude that only the incumbent is excluded from the provisions of the Agreement and not the position." [emphasis added]

The scope on this property, like so many others, excepts only one chief train dispatcher, the person - not the position.

Consistent with the above quoted awards, in application of the scope, it follows that since the position of Chief

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Train Dispatcher is not excepted from the agreement, then neither is the work, which by custom and practice, attaches to the position. Of course, an exempt Chief Train Dispatcher may perform the duties when he occupies the position, but, in this case, no incumbent Chief Train Dispatcher occupied the position during the claim period. Therefore, absent the incumbent's occupancy, the Chief Train Dispatcher's position was an agreement position during the claim period. In this writer's opinion, no other conclusion can logically be drawn.

It is not without some reservation that I dissent to this portion of the award in view of the fact that it is unclear, from the language of the award, whether this concept was accepted or rejected by the Board. For example, on page four the Award correctly holds "The Scope Rule exempts from coverage one Chief Train Dispatcher [the person] in each dispatching office." [emphasis supplied]. This is completely consistent with the scope and the previous awards on the subject.

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However, later in the same paragraph, the Award urges "In exempting one Chief Dispatcher position in each office the rule also obviously exempts all of the duties...". This statement is in total contravention of the scope, as well as the principles enunciated within the above quoted awards. Award 29719 is replete with further comparable examples.

Whatever the Board's intentions were regarding this issue, this opinion will hopefully set the record straight concerning the Employees' position on the matter.

Issue No. 2

It doesn't seem odd or unusual for employees who are adversely affect by a Carrier's violation of their Schedule Agreement to seek reparation to the extent that said violation caused them to loose the opportunity to fill a position and earn the resultant compensation.

In the case at hand, the Carrier employs fewer than a dozen train dispatcher employees. Award 29719 confirms "...Rule 8, requires...permanent appointments to Chief Train Dispatcher

be made from Dispatchers..." In a practical sense then, it stands to reason, that one of those rostered train dispatchers stood for advancement to the position of Chief Train Dispatcher. Of course, that individual cannot be specifically identified, as the Carrier never initiated and fulfilled the selection process. Nonetheless, it can be said, without fear of contradiction, that one of the Claimants, in compliance with Rule 8, would have been appointed Chief Train Dispatcher. Thus, as a class, Claimants were deprived of a work opportunity reserved for them by Rules 1 and 8.

Absent a Chief Train Dispatcher's permanent appointment, at a minimum the employees were entitled to fill, what effectively was a temporarily vacant Chief Train Dispatcher's position. Simply put, during the claim period, the absence of a Chief Train Dispatcher incumbent, albeit in this case due to the Carrier's failure to make a proper permanent appointment, constituted a temporary period of absence, as that term is used in Rule 8.

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While concurrence must be entered regarding the limited damages assessed by the Board, based on the above, this writer finds those damages fall way short of full and proper atonement for the agreement violation.

Perhaps, considering the magnitude of the Carrier's potential liability in this case, the Board sought middle ground on this issue; hold for the employees regarding the violation allowing limited damages; but, contain the degree of damages so as to not too severely impact the carrier. Should this have been what the Board had in mind, while a noble goal, the monetary cost associated with a proven contract violation is of no concern to this Board.

Third Division Award No. 29402

"...On occasion, a reading of a contract may produce harsh results, and we do not question that a sustaining award results in increased cost to the Carrier." [emphasis added]

After all, the employees simply pursued compensatory damages for work they would have performed and wages they would have earned had the Carrier not violated the Agreement. [Third Division Award No. 11937]

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Dissent Award No. 29719

What has occurred here, is that this Carrier, by failing to make permanent appointment to the Chief Train Dispatcher's position violated the Agreement for an extended period of time at nominal cost. The Board has effectively excused the Carrier's violation by declining to assess the full damages sought by the employees. It begs the question; will the damages associated with this Award provide sufficient negative inducement to compel the Carrier's compliance? That remains to be seen.



L. A. Parmelee, Labor Member

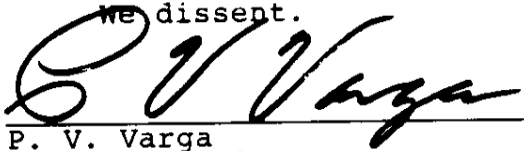
CARRIER MEMBERS' DISSENT
TO
AWARD 29719, DOCKET TD-30235
(Referee Fletcher)

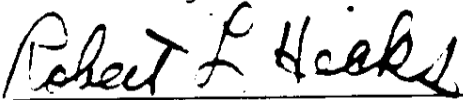
In fashioning the damages portion of its finding, the Majority has unfortunately entered into an area which had been previously argued before the Third Division, and resolved. The consequence of this wandering will likely be the resurrection of an old dispute as the cost of resolving this latest one.

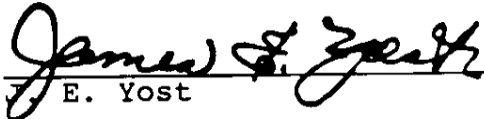
Third Division Award 28133, dated September 25, 1988, concluded that language of Rule 8 pertaining to relief of chief dispatchers, during temporary periods of absence, did not make such relief mandatory. While Rule 8 included the clause that such relief "...shall be made by qualified train dispatchers...", the Board correctly recognized that the source of relief was mandatory, but the decision whether to employ relief had not been bargained away, i.e., such decision remained at the Carrier's discretion.

Therefore, it is bewildering to the Carrier Members that in the disposition in this present case, the Majority elects to find, "...notwithstanding what was decided in Award 28133," that damages will include "time for annual vacations and other temporary absences, whatever they may have been..." (emphasis added). While we believe the Carrier's right to decide to fill or not fill temporary absences remains undisturbed, nevertheless, the referee's choice of words will probably result in more disputes between the parties, which is a disservice to all.

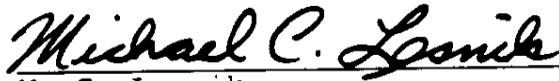
we dissent.


P. V. Varga


R. L. Hicks


E. Yost


M. W. Fingerhut


M. C. Lesnik

LABOR MEMBER'S RESPONSE
TO
CARRIER MEMBERS' DISSENT
AWARD NO. 29719, DOCKET 30235

The Carrier Members' dissent is a last ditch effort to apply Award 28133 where it just doesn't fit.

The issue dealt with in Award 28133 was entirely different than that involved in Award 29719. 28133 addressed a claim involving the Chief Dispatcher's early departure from the office to attend meetings. The Organization contended that these departures constituted vacancies that should have been filled in accordance with Rule 8.

In an attempt to bolster its twisted logic, the majority in 28133 then proceeded to provided the reader with an english lesson conveying its view of the meaning and use of verbs and prepositions. Finally, 28133 concluded that "...whether any one will be assigned to relieve the chief during absences of this unique nature is a managerial prerogative left unaltered by this rule." [emphasis added]

Specifically, the "unique" absences referenced in 28133 were circumstances where the chief dispatcher reported for duty in the office and later departed to perform other carrier related business at another location. Those narrow and unique circumstances did not exist in the dispute resolved in 29719.

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LM's Response
AWard 29719

The issue bringing rise to 29719 involved the Carrier's wholesale elimination of the chief dispatcher's position and its redesignation as an assistant superintendent's position. The carrier's sole purpose was to eliminate scope coverage of the position. The carrier's efforts failed.

In resolving the issue involved in Award 29719, this Board categorically rejected the opinion expressed in 28133. It simply didn't apply. Try as they might, at this point the Carrier Members have no hope of reversing that determination.


L. A. Parmelee, Labor Member

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Serial No. 358

Interpretation No. 1
to Award No. 29719
Docket No. TD-30235

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Duluth, Missabe and Iron Range Railway Company

Upon application of the Carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following Interpretation is made;

The final two paragraphs of the Board's findings in Award No. 29719 provided:

"The injury here to the Organization is the lost opportunity to provide relief for the Chief on one day per week, and for vacations and other absences, as provided in Rule 8. Notwithstanding what was decided in Third Division Award 28133, a fair reading of Rule 8 contemplates that a weekly rest day will be assigned to the Chief Train Dispatcher which rest day will be a part of the weekly schedule of a Train Dispatcher assignment. When Carrier changed the title of the Chief Train Dispatcher to that of Assistant Superintendent it deprived the Organization of this work opportunity. Accordingly, eligible Dispatchers are entitled to recovery of this lost work opportunity. Additionally, Dispatchers lost the opportunity to provide relief for annual vacations and other absences during this time.

Therefore the Board will allow one days pay per week, plus time for annual vacations and other temporary absences, whatever they may have been, to be paid to the senior qualified Dispatcher, as determined by a check of Carrier records."

Interpretation No. 1
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Following issuance of the Award Carrier paid for 158 days, what it claims is the equivalent of one assigned rest day per week during the claim period. The Organization contends that to comply with the decision it is necessary for Carrier to pay for a second rest day each week, plus pay for absences from the office for vacation, attending staff meetings, travel, etc. When Carrier resisted the Organization's interpretation of the remedy provided by the Board, enforcement action was commenced in Federal Court, under 45 U.S.C. § 153 First (p). Action on the Organization's petition has been stayed pending the Board's Interpretation here.

After review of the Parties' written Submissions and consideration of their oral arguments, the Board concludes that two questions have been presented for Interpretation. Fairly stated these questions are:

"(1) Does the Award require payment for the Chief Dispatcher's second weekly assigned rest day?

(2) Does the Award require payment for vacations and other temporary periods of absence when Carrier did not provide physical relief for the Chief Dispatcher and his duties were not performed by someone holding Train Dispatcher seniority.?"

The first question is answered "No." Payment entitlement is based on the unambiguous language of the first paragraph Rule 8, making one weekly rest day of the excepted Chief's work week a part of the weekly schedule of a trick Train Dispatcher. When Carrier discontinued providing a weekly rest day for the Chief as part of a weekly schedule for a trick Train Dispatcher, the Agreement was breached, and an element the parties had agreed upon was removed from coverage of the agreement. However, Rule 8 makes no provision that more than one single weekly rest day for Chiefs will be made a part of the weekly schedule for a Train Dispatcher assignment. The parties were capable of providing for this result, if it was their intent to do so. Accordingly, Award 29719 does not require payment for more than one rest day per week, because only one rest day per week for the excepted Chief is required to be a part of a Train Dispatcher's assignment.

The answer to Question 2 is "No." At the time the Board was considering the grievance dealt with in Award 29719, it was fully aware of its earlier holding in Award No. 28133, wherein it was concluded that the second paragraph of Rule 8, "only comes into play after it is determined if the job is filled or if someone actually performed the [Chief's] duties." It was not the Board's intent, in Award 29719, to modify in any fashion the conclusions reached in Award 28133, particularly "whether any one will be assigned to relieve the [Chief] during absences of this unique nature is a managerial prerogative left unaltered by the rule." Therefore, when the Chief was away for annual vacations and other temporary absences, and no relief was provided, or his duties were not performed, Award 28133 does not contemplate payment for these absences.

In summary, the Board holds that Award 29719 requires payment for one rest day per week, because the first paragraph of Rule 8 requires that one rest day per week of the Chief's assignment be made a part of a Trick Dispatcher's assignment. The Board did not require payment for the second weekly rest day of the Chief because the first paragraph of Rule 8 does not require that it be made a part of a Trick Dispatcher's assignment. The Board, under the application of the second paragraph of Rule 8, did require payment for the lost opportunity to provide relief for annual vacations and other absences (not including any rest days as these are covered by the first paragraph of Rule 8) if the Chief's job was filled or someone actually performed the Chief's duties. The Board did not require payment for the lost opportunity to provide relief for annual vacations and other absences if the Chief's job was not filled or someone did not perform his duties during his vacation and other absences.

Referee John C. Fletcher, who sat with the Division as a member when Award 29719 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 1996.