Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31289
Docket No. TD-30647
95-3-92-3-547

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
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim in behalf of Train Dispatcher K. D. Gerald for one day's pay at pro-rata rate of trick train dispatcher on each date January 16, 17, 18, 19, 20, 23, 24, 25, 26, and 27, 1991."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

In January 1991, Dispatcher D. R. Russel was scheduled for ten days annual vacation. Dispatcher K. D. Gerald, requested to work the vacation absence, which request was denied. Vacation Relief Dispatcher W. R. Wilkinson worked the vacation absence. Gerald worked his own job, and also submitted ten time slips, one for each vacation day, seeking 8 hours pro rata pay account "... denied right to exercise seniority to D. R. Russel vacation." The Organization contends that Gerald is entitled to payment under the provisions of Article 4 (d) and Article 5 (b), because he was only employee that requested to work the vacancy. These provisions provide:

"ARTICLE 4 - FILLING POSITIONS

(d) In filling positions of train dispatcher, ability being sufficient, seniority as a train dispatcher shall govern.

ARTICLE 5 - TEMPORARY VACANCIES

(b) Temporary vacancies of ninety (90) days or less duration shall not be bufletined, but shall be assigned to the senior qualified applicant."

Carrier defends on the basis that it has never considered vacations to be temporary vacancies subject to the application of Article 5. Further, that the vacancy was filled by the Dispatcher assigned to the regularly assigned relief position, which was established by Agreement between the parties to perform unassigned relief work, including vacations. Also, the employee used was senior to Claimant. And Claimant is not entitled to additional compensation, in any event, because he was fully employed at the time.

When Claimant made a request to work Dispatcher Russell's vacation relief, more senior Dispatcher Wilkinson had been assigned to the "regularly assigned relief position" that had been established by Paragraph 7 of the December 12, 1978 Letter Agreement reading:

> "A minimum of one regularly assigned relief position will be established and maintained to perform relief work, including vacations. Incumbent(s) of such positions(s) to be used in the same manner as extra dispatchers, seniority to govern between two or more and such positions will not have assigned rest days."

The text of this provision of the Letter Agreement, which, from complete review of this record appears to have been in place at the time of this claim, provides that the relief dispatcher will perform vacation relief work. That is what occurred on the dates involved in this claim. Claimant was not entitled to move on to a vacation relief hold down when the job was being filled by the incumbent of the relief assignment, a more senior employee, who held the job by bid. Accordingly the Board must conclude that the claim is without merit.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Labor Member's Dissent
Award No. 31289, Docket TD-30647
Referee Fletcher

The decision of the majority in this matter is seriously flawed. The Claimant applied for a temporary vacancy in accordance with Articles 4(d) and 5(b) of the Agreement. As indicated in the Award, the Carrier denied the Claimant's request on the basis of the December 12, 1978 Letter Agreement.

The problem with following the terms of the December 12, 1978 Letter Agreement was that, at the time of the claim, the Letter Agreement had been subsumed by the January 1, 1979 Schedule Agreement which included Articles 4(d) and 5(b) as well as Addendums 9 and 9(a). The addendums, which address the very Agreement articles and circumstances involved in this dispute, were completely ignored by the majority.

Addendum 9 to the Agreement was a December 11, 1979 letter from former ATDA Vice President Chandler to J. L. Deveney, the Carrier's Vice President, who was the Carrier individual signatory to the January 1, 1979 Agreement itself. Therein, ATDA Vice President Chandler clarified the Organization's position regarding temporary vacancies by stating;

> "It has come to my attention that a misunderstanding exists as to the application of certain provisions of the revised schedule agreement effective January 1, 1979...as it applies to Item 7 of the Letter Agreement, Article 3(d), and Article 5(b) of the Schedule Agreement.
>
> Article 3(d) was an addition to the agreement wherein we made a distinction between temporary vacancies. A temporary vacancy of four days or less would be considered extra work and would be performed

> by extra dispatchers. Five or more working days would be a temporary vacancy subject to seniority choice.
>
> You will note that Item 7 of the Letter Agreement states the incumbent of this position is 'to be used on the same manner as extra dispatchers...' and Article 5(b) provides that temporary vacancies are to be assigned to the senior qualified applicant..." [emphasis added]

The Carrier's Vice President responded to this letter by agreeing "...to the interpretation of such rules..." The effect of these addendums was that they distinguished between vacancies subject filling as "extra work" (those of four days or less) and vacancies subject to filling by seniority choice (those of five or more days, but less than ninety). Here the Claimant applied for a ten day vacation vacancy. Plainly, the provisions of Article 5(b), Article 4(d) and Adendums 9 and 9(a) would require placement of the Claimant on such a vacancy.

The Carrier was wrong to deny the request and the majority was wrong to ignore applicable contract provisions supporting the claim. I dissent.

L. A. Parmelee, Labor Member