

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34157
Docket No. TD-34729
00-3-98-3-390**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(American Train Dispatchers Department
(International Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim one days pay at the penalty rate of pay for Sunday, July 7, 1996, account the Carrier used Mr. James T. Malek out of call to cover vacancy on third trick Wisconsin when the incumbent of the position, Mr. Fontana, was at home on his rest day and available to cover the position but was not called to do so.”

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 were given due notice of hearing thereon.

Factually, the Carrier had a third trick vacancy and made a single call to the Claimant around 5:00 P.M. Rule 11(d) provides that “when there are not sufficient extra dispatchers available to perform additional extra work at the straight time rate, the work should first be offered to the regularly assigned occupant of the position.” There is no dispute about the fact that there were no extra dispatchers available. Nor

is there any dispute that the Claimant is the regularly assigned occupant who by Rule 11(d) should have been offered the work. The dispute herein is whether the Carrier made a reasonable effort to contact the Claimant.

The Organization maintains that there was no emergency. It argues that the Claimant was called only once and that numerous Awards hold that one call is not enough. The Organization points out that the Carrier had over seven hours to fill the position and by its actions removed the possibility of reaching the Claimant who was rightly entitled to cover the position. The Organization does not deny that the Claimant was not at home when the 5:00 P.M. call was made, but holds that he was home the remainder of the night.

The Carrier defends its actions in arguing that there were circumstances that made it imperative to act as it did. The Carrier argues it acted reasonably due to the fact that:

“the train dispatching office had three to four train dispatchers resign, a shortage of train dispatchers, numerous vacancies and a constant rearranging to avoid hours of service violations, and with the transition involved in moving the office from Milwaukee to Minneapolis coupled with the shortage of train dispatchers as well as the need to release train dispatchers for training. Under these circumstances, and the fact it is a must fill position, the Company could not wait.”

The Carrier maintains it did act properly and due to the fact that the Claimant admits he was not at home, “a reasonable effort was made.”

The Board does not agree. The negotiated Rule provides the benefit to the incumbent for work on his rest day. Whatever manpower shortage existed, it does not reduce the Carrier's obligation to abide by the Agreement. The Board is not persuaded that the events compel a finding of emergency and justify a single call seven hours in advance. The Board has similarly stated this position on numerous occasions with regard to both manpower and what constitutes a reasonable effort to reach employees (Third Division Awards 20228, 26562, 27973, 29527 and 31704). The fact that the Claimant was not at home at 5:00 P.M. is not controlling.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of June, 2000.