

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34227
Docket No. TD-35058
00-3-98-3-803**

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

**(American Train Dispatchers Department/
(International Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Burlington Northern and Santa Fe Railway Company**

STATEMENT OF CLAIM:

“The Burlington Northern Santa Fe Railroad Company (hereinafter referred to as ‘the Carrier’) violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as ‘the Organization’), including but not limited to Article 2(e) in particular, when on June 9, 1997 train dispatcher T. A. Lambert was not allowed to protect his assigned position and was instead required to protect a position other than the one obtained by the exercise of seniority. Mr. Lambert was compensated at the pro rata rate of pay, rather than at the overtime rate of pay as required, for June 9, 1997.”

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.

At the time this dispute arose, the Claimant was working the Carrier's Coastline Relief 12 position. He had been placed in that position due to the vacation vacancy of a Mr. Greshik, the dispatcher regularly assigned to Powder River position No. 155. A third dispatcher, Mr. McCain was temporarily moved to the Powder River position, and the Claimant was assigned to cover Mr. McCain's position while the former covered Mr. Greshik's position. Mr. Greshik returned from vacation as scheduled on June 8, 1997. His return released Mr. McCain to return to his former position, which, in turn, released the Claimant to his assigned position of Guaranteed Assigned Train Dispatcher Board (GATDB). After the Claimant completed his tour on Mr. McCain's position and was returned to the GATDB, Mr. McCain called in and laid off for bereavement leave for the dates of June 9 and 10, 1997.

On June 22, 1997, the Claimant filed a time slip claiming the difference between straight time and time and one half for June 9, 1997. The basis for his claim was that he believed he should have continued to protect Mr. McCain's position, rather than being sent to protect a different position. The Carrier denied the claim, noting that the Claimant had been told in advance that his temporary relief position would end on June 8, 1997, and that he was told on June 8, 1997 that he would be released at the end of the shift. Thus, Mr. McCain's subsequent leave created a "new" vacancy, which was filled through order of call. This denial was subsequently progressed in the usual manner.

It is the Organization's position that the Carrier removed the Claimant from his temporary position before it actually expired. They maintain that since the incumbent of that position went on bereavement leave the day after Mr. Greshick's vacation leave expired, the temporary vacancy onto which the Claimant had been placed remained open. Thus, by removing him from the vacancy, the Carrier was obliged to pay the Claimant time and one half under the provisions of Article 2 (e) of the Agreement between the Parties. Article 2 (e) reads in pertinent part as follows:

"(e) SERVICE ON POSITIONS OTHER THAN SENIORITY CHOICE.

An assigned train dispatcher required to work a position other than the one he obtained in the exercise of his seniority, except an assigned train dispatcher who is used on the position of chief dispatcher, or assistant chief dispatcher, shall be compensated therefor at the overtime rate of the position worked;"

It is the position of the Carrier that on June 8, 1997, all three employees reverted to their permanent positions. The Claimant's permanent position was on the Guaranteed Assigned Train Dispatcher Board. The Carrier maintains that the Claimant was properly used to fill the first trick Pasco East vacancy from the GATDB. It contends that the applicable language controlling in this case is Article 12 (i), not Article 2 (e). Article 12(i) reads as follows:

"Prompt notice of each temporary position shall be posted on bulletin boards in the office where the position exists; assigned train dispatcher in such office may transfer thereto subject to seniority. Assignments to temporary positions expire with the completion of the last working day of the vacancy filled under this rule."

A careful examination of the facts of this case reveals that the Claimant was not required to work a position other than the one obtained in the exercise of seniority. Thus, Article 2(e) is inapplicable in this case. Rather, the clear language of Article 12(i) provides that any temporary vacancy expires "with the completion of the last working day of the vacancy filled." It is undisputed that the Claimant completed his tour of duty in the Coastline Relief position. Accordingly, in keeping with Article 12(i), the temporary vacancy in Mr. McCain's position expired. Another, two-day, temporary vacancy was created by Mr. McCain's marking off for bereavement leave. The Carrier was free to use the Claimant to fill the first trick Pasco East vacancy, while it filled the temporary vacancy created by Mr. McCain's leave through order of call.

AWARD

Claim denied.

ORDER

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

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

Dated at Chicago, Illinois, this 23rd day of August, 2000.