

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35189
Docket No. TD-34974
00-3-98-3-736**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim the difference in pay between the straight time and the overtime rate of pay for train dispatcher Eric T. Hendrickson for Thursday, July 10, 1997 account the Carrier used junior dispatcher off his assigned positions to cover vacancy on 2nd trick Dakota Desk when Mr. Hendrickson was working 2nd trick River Desk and is senior to the dispatcher who was slid in to cover the vacancy.”

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.

This dispute involves the application of Rule 15, Order of Call, Paragraph 5, to the assignment to fill a vacancy on the 2nd trick Dakota Desk on July 10, 1997. The relevant language provides:

“Rule 15 - ORDER OF CALL

The call order for EXTRA TRAIN DISPATCHER WORK when there are no guaranteed assigned or extra train dispatchers available to perform the work at the straight time rate will be as follows:

*** * ***

- 5. If a guaranteed assigned or extra dispatcher is available but not qualified on the position to be filled, the senior qualified dispatcher working the same shift may be used off assignment and the guaranteed assigned or extra dispatcher fill his/her vacancy.”**

The Claimant was senior to the Train Dispatcher utilized by the Carrier to fill the vacancy in question at an overtime rate. Both Dispatchers were working their regular scheduled assignments at the time.

The Organization contends that the Carrier was obliged under the terms of Rule 15, Paragraph 5 to fill the vacancy with the senior qualified employee, in this case the Claimant. It asserts that the Claimant’s regular assignment (River Desk) could have been filled by Train Dispatcher Woods, a former GATD, who was qualified to perform that assignment. Accordingly, it argues that the Claimant lost the difference between the overtime rate that was paid to the employee filling the Dakota Desk vacancy and the straight time rate which he earned performing his regular assignment on July 10, 1997.

The Carrier initially argues that the Claimant’s first obligation is to protect his regular assignment, and that he was not available to fill the vacancy in issue as it would have resulted in an Hours of Service violation. It next contends that Rule 15, Paragraph 5 does not apply in this case because there were no guaranteed assigned or extra Dispatchers available on the date of the claim to fill the Claimant's position. It notes that former GATD Woods was not available having been awarded a regular position and being in the process of training and familiarization with that territory so she could assume the new position and relieve the Dispatcher training her. The Carrier also asserts that the language of Rule 15, Paragraph 5, even if it did apply, is permissive, and does not require the assignment of the senior employee to fill the vacancy under all circumstances.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proving that the Carrier violated Rule 15, Paragraph 5 in its assignment of a junior employee to fill the vacancy on the Dakota Desk on July 10, 1997 rather than the Claimant. This determination is based upon the clear language of that Rule, which addresses the situation where a guaranteed assigned or extra Dispatcher is available but not qualified to fill the vacancy. In the instant case it is undisputed that there were no guaranteed assigned or extra Dispatchers available to fill the vacancy at the straight time rate. Woods, the former GATD employee identified by the Organization as the one Dispatcher who was qualified to assume the Claimant's position had he been transferred to fill the Dakota Desk vacancy, was not available to replace the Claimant, as she had been awarded a new position and was training at the time. Thus, the Organization failed to show how Rule 15, Paragraph 5 is applicable to the facts of the instant case. Having so found, it is unnecessary for us to reach the merits of the Carrier's argument concerning the permissive nature of such provision.

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 20th day of December, 2000.