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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35502
Docket No. TD-34587
01-3-98-3-236**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

**(American Train Dispatchers Department/
(International Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Please allow eight (8) hours pay, at the time and one half rate, at the relief Chief Train Dispatcher’s rate for Wednesday, December 25, 1996 and again on Wednesday, January 1, 1997 for Thomas M. Olsen, Train Dispatcher, as he was home and available and not called to fill the vacancies.

The excepted Chief Train Dispatcher’s position was vacant by reason of the temporary absence of the incumbent.”

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.

A number of issues have been raised in this proceeding, all relating to the interpretation to be placed upon Rule 1 - SCOPE PARAGRAPH (b), item 2, which

reads in part, "two weekly rest days shall be assigned to each excepted Chief Train Dispatchers position. Relief of excepted Chief Train Dispatchers for their rest days, annual vacations, and other temporary periods of absence from their positions shall be made by qualified Train Dispatchers from the office involved." These issues are whether the Carrier had the right to blank the position of Chief Train Dispatcher on the dates in question; whether the Claimant had the qualifications to fill the position; and whether a favorable finding for the Claimant would entitle him to compensation either at the straight time or time and one-half rates for the two days.

The Organization, in support of its claim that the Carrier did not have the right to blank the position cited a number of Awards. These, however, do not fit the circumstances of this case. Public Law Board 5339 dealt with situations in which the position was filled by persons other than those claiming relief. The language quoted by the Organization "Two weekly rest days must be assigned to each Chief Dispatcher and the rest days are to be worked by other Dispatchers" appears only in the context of who is entitled to the work. The next four Awards, Third Division Award 22206 and Awards 1, 2 and 3 of Public Law Board No. 1594, all deal with contract interpretation issues not raised in the instant case.

The Carrier contends it has the right to blank a position. Neither party cites any other portion of the contract in support of its position. A careful reading of the SCOPE language indicates that it is intended to assure that relief only be provided by certain specified personnel. The language cannot be read to mandate the filling of a blank position. Accordingly, it is not necessary to consider the other issues raised. The Organization has failed to sustain its burden.

AWARD

Claim denied.

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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 21st day of June, 2001.

Labor Member's Dissent
To Third Division Award No. 35502
Docket No. TD-34587
(Referee Donald W. Cohen)

The Agreement Rule on which this claim was based reads:

“Two weekly rest days **shall** be assigned to each excepted Chief Train Dispatcher's position. Relief of excepted Chief Train Dispatcher for their rest days, annual vacation, and other temporary periods of absence from their positions **shall** be made by qualified Train Dispatchers from the office involved.”
(Emphasis added.)

Clearly, this unambiguous language requires that qualified Train Dispatchers shall work the rest days (and other vacancies) of excepted Chief Train Dispatchers.

Public Law Board No. 5339, Awards 1 and 2 between these same parties considered and interpreted this exact Agreement Rule. While some of the facts involved in those cases may have been different, the Carrier made the same argument there, as here, concerning its right to blank excepted Chief Train Dispatcher rest day (and other) vacancies. In rejecting the Carrier's argument, Public Law Board No. 5339 found:

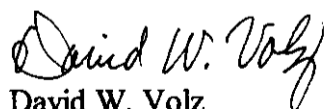
“And, even though the position is excepted, the Agreement places constraints on how it is to be filled and who is entitled to work the job during periods of absence. For example, only Dispatchers are eligible for permanent assignment to a Chief Train Dispatcher vacancy. Two weekly rest days **must** be assigned to each Chief Dispatcher and the rest days **are** to be worked by other Dispatchers. The same relief procedure is required for vacations and other absences.” (Emphasis added.)

And, then in crafting the remedy in those cases, Public Law Board No. 5339 found:

“After the [permanent] appointment other Train Dispatchers in the office would have no entitlements to the work except that specifically provided in the Agreement – rest days, vacations and other periods of absences.... Therefore the Board will allow two days per week, plus time for annual vacations and other temporary absences, whatever they may have been....”

Given the clear mandate of the Agreement and the precedent of Public Law Board No. 5339, the Majority's decision is in error.

Therefore, I dissent.



David W. Volz
Labor Member