

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36312  
Docket No. TD-36222  
02-3-00-3-430

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(American Train Dispatchers Department  
( 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 train dispatchers for Saturday November 6, 1999 account not called to cover a vacancy on 2nd trick Portal Desk. The Carrier combined the work of the Portal Desk and Dakota Desk instead of filling the Portal position. Mr. Malek was 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.

On Saturday, November 6, 1999, the incumbent Train Dispatcher on the second trick Portal Desk position marked off absent due to illness at the Carrier's Main Train Dispatching Office in Minneapolis, Minnesota. The parties concur that, inasmuch as there was not any guaranteed assigned or extra Train Dispatchers available to perform

the work of the second shift Portal Desk at the straight-time rate of pay, the Carrier had to invoke the Rule 15 Order of Call for overtime work. Rule 15 reads:

**"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:**

- 1. Incumbent of the position to be relieved if the vacancy occurs on his/her rest day.**
- 2. Incumbent of the relief assignment relieving the rest days on the position to be relieved will be used on his/her rest day. If the position is relieved by the two relief assignments, the senior of the two incumbents of such relief assignments will be used if both are on their rest days.**
- 3. Senior of either rested and available dispatchers on assigned rest day or rested and available guaranteed assigned or extra dispatchers who would work at overtime for the 6th or 7th day.**

**NOTE: It is understood that no train dispatcher in the above categories will be eligible for the overtime work involved if the performance of such work would result in his/her unavailability to work his/her own assignment on account of Hours of Service Law restrictions.**

- 4. A relief train dispatcher due to perform "other service" in the same shift as the vacant position.**
- 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.**
- 6. If unable to fill the vacancy under 1, 2, 3, 4 or 5, the senior qualified dispatcher rested and available will be called ahead of shift and his/her vacancy filled by a guaranteed assigned or extra**

dispatcher, if available at straight time rate, if not available at straight time that vacancy will be filled under the provisions of the call order.

**NOTE:** It is understood that a train dispatcher called for overtime under items 1, 2, 3, 4, 5 or 6, turns down the call he/she will not be subject to call for the vacancy or subsequent resultant vacancies until all means provided by items 1 through 6 have been exhausted.

7. If no regular dispatchers desire to fill the vacancy, dispatcher will be required to perform the extra work at the overtime rate of pay. If there are extra dispatchers available to perform the work at the straight time rate, they will be first utilized.
8. In applying the emergency provisions of the Hours of Service Law should a double be required, the following will apply:
  - (a) The dispatcher to be relieved may work an additional four (4) hours for a total of twelve (12) hours on duty, and
  - (b) The dispatcher scheduled to relieve the position being doubled may be called in four (4) hours early."

The Parties agree that there was not any Dispatcher who fell within the categories covered by Items 1 through 5 of the Order of Call. The Claimant was the senior available and rested Train Dispatcher. He fit precisely within the parameters of Item 6 of Rule 15. Citing the Note following Item 3, the Carrier did not call the Claimant for the November 6, 1999 second shift Portal Desk vacancy because, if he had filled the vacancy, the Claimant would have been unable to work his regular first shift position at the Minnesota Desk on November 7, 1999. The Organization charges that the Carrier should have called the Claimant to work the vacancy. The Carrier further contended that it exhausted all eight items in the Order of Call so it combined the work of the Portal Desk with the work of the Dakota Desk.

Rule 15 establishes a hierarchy of calls. The Carrier must sequentially go down each item until it finds a Train Dispatcher to perform the overtime service. It is true,

that the Note following Item 3 disqualified the Claimant from being called by the Carrier when applying Items 1, 2 and 3 of the hierarchy. He was rested and available, but the Item 3 Note expressly excludes any Train Dispatcher who, if called, would be rendered unavailable for the Train Dispatcher's own assignment. The Carrier correctly asserts that had it called the Claimant, pursuant to Item 3, the Claimant would have been unavailable to work his regular assignment on November 7 per the Hours of Service Act. Thus, the issue becomes whether the Note following Item 3 permanently disqualifies the Dispatcher from the Order of Call or whether the Note operates to push the Dispatcher downward to a lower priority on the hierarchy.

The Board holds that the Note to Item 3 does not permanently and absolutely disqualify a senior, rested and available Train Dispatcher from the order of call. The placement of the Note is critical. The Note follows Item 3 and expressly mentions the first three categories. Thus, a Train Dispatcher covered by the Note is excluded from being called when the Carrier applies the first three categories even if the Dispatcher satisfies the parameters of Items 1, 2 or 3. If the parties had wanted to permanently exclude a Train Dispatcher from the ambit of the Order of Call, the Note would be placed after Items 6 or 7 and would contain an express reference to the preceding 6 or 7 categories. Thus, the Note operated to move the Claimant down the hierarchy of categories. But for the fact that the Claimant had a regular assignment on November 7, the Claimant otherwise would have been eligible for call under Item 3. By being ineligible for call at Item 3, the Carrier could bypass the Claimant and call a Train Dispatcher pursuant to Items 4 and 5. Had the Carrier been successful in finding a Train Dispatcher under Items 4 and 5, it would have properly refrained from using the Claimant. However, the Claimant became eligible to be called under Item 6. Indeed, Item 6 contemplates that the Carrier will be calling a Train Dispatcher who might encounter problems with the Hours of Service Act because Item 6 expressly addresses filling the vacancy created by a Train Dispatcher being called under Item 6.

Therefore, the Note following Item 3 shifted the Claimant's level of eligibility from Item 3 down to Item 6. By not calling the Claimant under the plain and unambiguous language in Item 6, the Carrier violated Rule 15.

Had the Carrier properly complied with Rule 15 by calling the Claimant to the November 6, 1999 second trip Portal Desk vacancy, the Claimant would have been compensated at the overtime rate, but he would not have worked his regular position

at the straight-time rate. Therefore, the Claimant incurred an overall economic loss amounting to four hours of pay.

Therefore, the Carrier shall compensate the Claimant for four hours at the straight-time rate of pay.

**AWARD**

**Claim sustained in accordance with the Findings.**

**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 13th day of November 2002.**