

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37491
Docket No. TD-37938
05-3-03-3-363

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

“(A) The SOO Line Railroad Company (the Carrier) violated the current schedule agreement between the Carrier and the Organization, including rule 15 thereof in particular, when on Thursday February 13, 2003 the Carrier failed to properly protect a vacancy existing on 3rd Dakota. Instead of using the claimant to fill the vacancy, the Carrier chose to use the Assistant Chief Dispatcher on the vacancy and then blanked his job.

(B) Because of the lost work opportunity caused by said violation the Carrier shall now compensate claimant E. Rocha \$309.22, which represents lost earnings for Thursday February 13, 2003.”

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.

The basic facts underlying the claim are not in dispute. On Thursday, February 13, 2003, the 3rd Trick Dakota position became vacant. The parties agree that there were no guaranteed assigned or extra Train Dispatchers available to fill the vacancy at the straight time rate. That required the Carrier to comply with Rule 15 Order of Call to cover the vacancy. The parties further agree that there were no Train Dispatchers eligible to fill the vacancy pursuant to the first four steps of the Rule.

The Organization contends that the Rule required calling the Claimant for the overtime opportunity under Step 6 of the Rule. The Carrier, to the contrary, maintains that it properly filled the vacancy at Step 5 and, therefore, did not need to reach the Claimant at Step 6. In this regard, the Carrier also asserts that the Scope Rule confirms that an Assistant Chief Dispatcher is a qualified Train Dispatcher within the meaning of Step 5 of Rule 15. The Organization contends, however, that a Letter of Understanding ("LOU") dated November 14, 2001 did not permit blanking the Assistant Chief Dispatcher position in the manner the Carrier did.

In filling the vacancy, it is undisputed that the Carrier had to blank the position of Assistant Chief Train Dispatcher to shift him over to fill the 3rd Trick Dakota vacancy. The LOU mandates that the Assistant Chief Dispatcher position will be filled as a five-day position. Thursday, February 13, 2003 was a scheduled work day for the position. By its terms, the LOU permits blanking the position when vacation absences cannot be filled on a straight time basis or will result in overtime being paid on resulting vacancies. It does not explicitly permit blanking the position for any other reasons. Nonetheless, the question of whether the Carrier violated the LOU is not within the scope of the instant claim. Accordingly, we do not express any opinions nor do we make any findings on that issue. Instead, the focus of the instant claim is whether the Carrier properly filled the 3rd Trick Dakota vacancy per Step 5 of Rule 15 as it maintains it did.

Step 5 of Rule 15 provides 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.”

It is readily apparent that Step 5 does not contemplate leaving behind any unfilled vacancies to be blanked when it is invoked. For it to be properly applied, Step 5 quite clearly requires that there must be another Dispatcher available to fill in to cover the vacancy of the Dispatcher being shifted off assignment. On this record, that was not done. Therefore, there is no proper basis for finding that the 3rd Trick Dakota vacancy was correctly filled per Step 5 of Rule 15. Accordingly, the Carrier was required to continue down the call order to Step 6 and offer the Claimant the overtime opportunity. The Carrier violated Rule 15 of the Agreement when it failed to do so.

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 April 2005.