Award No. 1814
Docket No. TD-1741

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: (a) Claim of the train dispatchers that Train Dispatcher Gilbert Beath, Oakland, California, office of Western Division was improperly compensated for his services during the week August 26, 1939 to September 2, 1939, and Train Dispatcher P. V. Wilson, Oakland, California, office of Western Division was improperly compensated for his services during the week August 24 to August 31, 1939, in accordance with the Train Dispatchers' Agreement on this property.

(b) Claim of the Train Dispatchers that Messrs. Gilbert Beath and P. V. Wilson should have been compensated for six (6) days during the weeks named in Paragraph (a) respectively, instead of five (5) days, and that they be paid for an additional day at rate of $10.64.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Southern Pacific Company (Pacific Lines) and its Train Dispatchers, represented by the American Train Dispatchers' Association, governing the hours of service and working conditions of train dispatchers, effective October 1, 1937.

Train Dispatchers Gilbert Beath and P. V. Wilson are permanently assigned train dispatchers in the Oakland, Calif., office, Western Division.

Article 1 (d) defines a permanent position as follows:

> "One which includes four (4) or more days train dispatching service per week, authorized for nine (9) months or more or which has existed more than nine (9) months."

The assignment of both Messrs. Beath and Wilson included six (6) days train dispatching service per week.

Article 3 (a) reads as follows:

> "Each regularly assigned train dispatcher, (and extra train dispatcher) who performs six (6) days dispatching service in any one week will be allowed and required to take one day off as a relief day, except when unavoidable emergency prevents furnishing relief. If required to work such relief day, will be allowed compensation on basis of rate and one-half.
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> "Note: It will not be deemed a violation of this section for a train dispatcher to work in excess of six (6) consecutive days due to making change of assignments, in which case he will assume the relief day of the position to which he transfers."

Had the carrier arbitrarily and without cause, placed Dispatchers P. V. Wilson and G. Beath in a position where they were deprived of compensation that they would, under agreement provisions, have received, then there might be some basis for the position of the petitioner in the instant case. However, the actual situation is that the petitioner cannot establish that the action of the carrier constituted a violation of a right, or even resultant damage. In order for this Board to sustain the alleged claim as submitted, it would have to find that the current agreement between the petitioner and the carrier provides that during each week a regularly assigned train dispatcher is entitled to compensation for six days' work regardless of whether work is actually performed. The carrier submits that if this Board sustains the alleged claim as submitted, it is doing that which it has no power or right to do, namely, the writing of a new rule into the agreement between the petitioner and the carrier.

CONCLUSION

The carrier asserts that the alleged claims as submitted ex parte to this Board by the petitioner are entirely without merit for they are not based, nor can they be based on a violation of the current agreement between the petitioner and the carrier. The carrier submits and has proven that its action was necessary, proper and strictly in accordance with all of the provisions of the current agreement between the petitioner and the carrier and therefore it is incumbent upon this Board to deny the alleged claim.

OPINION OF BOARD: The facts in this case are not in dispute. Owing to an increase in the number of positions at the Oakland Pier, a rearrangement of relief assignments of train dispatchers was made necessary. The relief days of the claimants were changed, the result being that for the first week each of them was required to take two relief days within a spread of less than six days.

The rules which it is claimed by the train dispatchers govern this case are the following:

"ARTICLE 3.

Relief Days

(a) Each regularly assigned train dispatcher, (and extra train dispatcher) who performs six (6) days dispatching service in any one week will be allowed and required to take one day off as a relief day, except when unavoidable emergency prevents furnishing relief. If required to work such relief day, will be allowed compensation on basis of rate and one-half.

NOTE: It will not be deemed a violation of this section for a train dispatcher to work in excess of six (6) consecutive days due to making change of assignments, in which case he will assume the relief day of the position to which he transfers.

(b) A regular relief day each week for each position (permanent or temporary) shall be established; reasonable notice shall be given of change in assignment of relief days. Combining or blanking positions for relief purposes will not be permitted except as agreed to between the Superintendent and Division Chairman, subject to concurrence of the Management and General Chairman."

* * *

"ARTICLE 4.

Hours of Service

(f) Loss of time on account of the hours of service law, or in changing positions, within an office, by the direction of proper authority

shall be paid for at the rate of the position for which service was performed immediately prior to such change. This does not apply in case of transfers account employes exercising seniority."

We do not see that the question of loss of time due to change of relief days is governed by any rule unless such reassignment can be regarded as a change of position under Article 4 (f). Apparently this is not the change of position to which that rule refers.

The employe who may have to work on a relief day owing to such rearrangement of working schedule is compensated under the provisions of Article 3 (a). But we are left without any specific provision to cover the case of a dispatcher who, under such circumstances, may lose a day's work during a regular assignment.

The claimants here involved are monthly rated employes whose pay is, however, computed on a daily basis. At the same time it seems to be conceded by both sides that these employes were on a regular assignment, the employes calling it a six-day assignment, the carrier referring to it as a seven day assignment with the seventh day being the relief day. So far as this case is concerned, this is a distinction without a difference.

The claim of the employes is that, since they were forced by the action of the carrier to lose a day's work during the term of their regular assignment, they must be compensated therefor at the daily rate. They rely on the principle that one assigned to work for a definite term is impliedly guaranteed pay for the full amount of time necessary to perform that assignment. For example, if the assignment is on a six day basis, the employe is guaranteed pay for six days so long as he is ready and willing to perform. As has been said by this board, the carrier cannot "chop up the assignment so that its actual time and earnings are quite indefinite." Award 621. We have no quarrel with such principle which seems to be established by Awards 621 and 759.

This seems to us, however, a different case. It is here contemplated by the parties as necessary to the railroad operation that reassignment of relief days may from time to time be necessary; and it is not questioned that such relief days may be changed by the carrier without any agreement with the employes. As an inevitable consequence of such change the parties must have known that in the readjustment of schedules the very situation would arise which is now before us,—that some men would be called on to work an extra day and others might lose a day during their first assigned period after such change.

We do not at all mean to lay down the doctrine that the carrier has the right to lay off a train dispatcher for any part of his period of assigned duty. We hold only that the parties, having determined in advance that the carrier has the right for good cause to make this particular readjustment, have impliedly agreed to accept the consequences of it, one of which is that a train dispatcher may lose a day from his assignment while such change is being made effective. As there is no specific provision in the rules providing compensation for such loss of time, it must be accepted by the employe as one of the conditions of his employment.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was no violation of the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1942.