Award No. 3205

Docket No. TD-2953

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mart J. O'Malley, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: I. Claim of the American Train Dispatchers Association that the Denver & Rio Grande Western Railroad Company failed to comply with the requirements of Article 2 (d) of the Train Dispatchers' Agreement effective January 1, 1943, when it failed and refused

A. To pay Relief Train Dispatcher G. H. Hughes, Salt Lake City, Utah office, at rate of time and one-half for service performed on March 22, 24, 25, 26, 27, 28, 29 and 31, 1944, and April 1, 4, 5 and 7, 1944, and

B. To pay Train Dispatcher W. L. Gaddis, Salt Lake City, Utah office, at rate of time and one-half for service performed on March 23, 25, 26, 27, 28, 29 and 30, 1944, and April 1, 2, 3, 4 and 5, 1944.

II. Relief Train Dispatcher G. H. Hughes and Train Dispatcher W. L. Gaddis shall now be paid at rate of time and one-half for service performed on the dates mentioned in Items A, and B, respectively, as is required by Article 2 (d), Train Dispatchers' current Agreement.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Denver & Rio Grande Western Railroad Company, Wilson McCrathy and Henry Swan, Trustees, and the American Train Dispatchers Association, governing the hours of service, working conditions and rates of pay of Train Dispatchers, effective January 1, 1943.

Rule 1—SCOPE, reads in part as follows:

"(a) The rules contained in this agreement apply to assistant and/or night chief, trick, relief and extra train dispatchers, but do not apply to chief train dispatchers other than as specified in Rules 3 (e) and 4."

Rule 2 (d) reads as follows:

"Train dispatchers notified or called to perform work not continuous with their regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less at pro rata rate and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

Carrier contends there was none—there could be no merit to the claim, by reason of the fact Mr. Gaddis requested that he be placed on the position.

In conclusion, the Carrier contends the claims should be denied for the following reasons:

1. That Claimant Hughes was placed on the first trick train dispatcher's job by direction of the Management, which is strictly in accord with the provisions of Rule 6-(b);

2. That Claimant Gaddis was placed on the third trick assistant chief dispatcher's position at his request; and

3. Rule 2 (d), relied upon by claimants, is not applicable to the instant claim for the reason the employes involved on dates set forth in claim, had regular work periods or assignments. They were not called to perform work not continuous with their regular work period.

OPINION OF THE BOARD: On March 22, 1944, the Salt Lake City third trick assistant chief dispatcher was removed from his position for investigation.

W. L. Gaddis was then the first trick train dispatcher in the same office with hours from 8:00 A. M. to 4:00 P. M. He was the senior dispatcher below the grade of assistant chief dispatcher. Upon learning that the third trick assistant chief dispatcher was being taken out of service, he requested that he be placed in that position. He "laid off" from his other assignment and prepared to take, and did take, and assume the duties of third trick assistant chief dispatcher in the Salt Lake City office. The hours of the new assignment were from 12:00 o'clock midnight to 8:00 A. M. When the position was later bulletined, he was the successful applicant. In this claim he now requests that he be paid at time and one-half for service performed on March 23, 25, 26, 27, 28, 29 and 30, 1944, and April 1, 2, 3, 4 and 5, 1944. In this claim we believe that Rule 14 (b) of the Contract made it necessary for the management to comply with his request that he be assigned or transferred to the advanced position as an assistant chief dispatcher. Having changed in accordance with the provisions of one rule of the contract, it would not do to claim that it violated some other rule or term of the same contract, unless that rule plainly so states.

The claim of G. H. Hughes is slightly different. At the request of the management he was assigned to perform duties as a dispatcher during an eight hour period of the day different from his regular assignment on four days each week.

It is admitted that the Carrier had the right to order the changes under the circumstances prevailing at the time, there being no extra dispatchers available. But it is claimed the transfer of these men prohibited them from working their regular assignment and forced them to work an eight hour period not continuous with the hours of their regular assignment.

The rule which the Employes claim has been violated is known as the "Call Rule" and is as follows:

> "Train dispatchers notified or called to perform work not continuous with their regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less at pro rata rate and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

This rule is a protection given to the employes to provide against numerous and unreasonable requests for duty at times outside of the time of their regular work period. Award 2269. It refers to a period of work separated from the regularly assigned work day or period by a duty free period. Award No. 2461. In that award it is also held that the rule does not apply to a period ". . . in advance of and continuous with the regular working hours."

The rule (2-d) evidently is not applicable to any work period which is connected with or a continuation of the regular work period. The contention of the Employes is that the word "concurrent" should be read into the rule so that time not in agreement with the regular working time would come under the terms of the rule. In effect, it would amount to a new or reformed contract.

The Employes point to no rule other than the one above referred to as being in support of their claim. The writer has endeavored to examine the rules with a view of ascertaining whether a supporting rule is contained therein, but such examination did not disclose any such rule.

Under the contract here involved and the prior awards of this Board, neither of the claimants can be compensated for the time claimed.

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 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 the Carrier did not violate Rule 2 (d).

AWARD

Claim I (a) denied;

I (b) denied.

Claim II denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1946.