

Award No. 5505

Docket No. TD-5472

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of Train Dispatcher L. L. Stanley, that:

(1) The Southern Pacific Company acted contrary to the intent of the requirements of the current Agreement between the parties to this dispute when, independently of the wishes of Train Dispatcher L. L. Stanley, the Carrier caused him to lose a day's pay on Monday, April 17, 1950, when the Carrier, for its own convenience, changed the regular weekly rest days which had theretofore been assigned to the position which Claimant Stanley had acquired in accordance with the rules of the Agreement, and

(2) By reason of Carrier's action, as set forth in above paragraph (1) of this claim, the Southern Pacific Company shall now compensate Claimant L. L. Stanley in the amount of \$19.30—which represents the day's pay he lost by reason thereof.

EMPLOYES' STATEMENT OF FACTS: An agreement governing compensation, hours of service and working conditions, dated April 1, 1947 (last revised as of September 1, 1949) between the parties to this dispute, and applicable to the Claimant in this case, was in effect at the time this dispute arose. A copy of that Agreement is on file with this Board and is, by this reference, made a part of this submission as though fully incorporated herein.

The rules pertinent to the instant dispute are shown below:

"ARTICLE 2, Sec. (a). BASIS OF COMPENSATION—MONTHLY EMPLOYEES.

Train dispatchers shall be monthly employees but the monthly compensation shall be computed on a daily basis."

ARTICLE 3, Sec. (a). REST DAYS:

Each assigned train dispatcher shall be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Nonconsecutive rest days may be assigned but only in instances where consecutive days will necessitate working any train dispatcher in excess of five (5) days per week.

men would be called on to work an extra day and others might lose a day during their first assigned period after such change.

* * * *

As there is no specific provision in the rules providing compensation for such loss of time, it must be accepted by the employee as one of the conditions of his employment."

The Board's jurisdiction is, of course, limited to the interpretation of the agreement between the parties, and in the absence of an agreement provision supporting the claim which has been made, the claim must be denied.

CONCLUSION

The carrier asserts that the claim in this docket is not supported by agreement provisions, and should be denied. Additionally, the dispute in connection with the application of the agreement rules on this property to the situation involved in this docket has already been referred to this Division for interpretation, and the opinion of this Division, as expressed in its Awards 1814 and 1815 denying the previous claims, should apply alike to the instant docket.

(Exhibits not reproduced.)

OPINION OF BOARD: Article 3, Section (d) of the Agreement between the parties provides that "regularly assigned rest days may be changed by giving ninety-six (96) hours' written notice to the train dispatchers affected." The Carriers admittedly gave only seventy-two hours' notice in this case. However, the Carrier objects to the introduction of the question of the propriety of the notice because such question was not raised in the handling of the claim on the property.

Since the facts as to the time of giving the notice and the rules of the Agreement are properly in evidence, this Board could properly decide the case upon that basis even if such question were not mentioned by either party. Hence, we find no merit in that contention of the Carrier.

Since the notice of change was not in conformity to the Agreement, the claim should be sustained.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.