

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

FORT WORTH AND DENVER RAILWAY COMPANY

THE WICHITA VALLEY RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Fort Worth and Denver City Railway Company; The Wichita Valley Railway Company failed to comply with the provisions of Rules 5 (a) and 5 (f) of the current agreement when it failed to use Train Dispatcher W. J. Hamilton to perform rest day relief service in its Wichita Falls, Texas, train dispatching office on November 19 and 26, 1950, and when it failed to use Train Dispatcher M. A. Davis to perform rest day relief service in its Wichita Falls, Texas, train dispatching office on December 17, 24 and 31, 1950.

(b) The Fort Worth and Denver City Railway Company, The Wichita Valley Railway Company shall now pay Train Dispatchers W. J. Hamilton and M. A. Davis at time and one-half the trick train dispatching rate for service to which they were entitled and which they were available to perform on the dates specified in Section (a) of this claim.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the Fort Worth and Denver City Railway Company; the Wichita Valley Railway Company and the American Train Dispatchers Association covering hours of service and working conditions governing train dispatchers, effective May 1, 1950, is on file with this Honorable Board and, by this reference, is made a part of this submission as though fully incorporated herein. Said Agreement will hereafter, be referred to as the "Agreement".

Pertinent Sections of Rule 5 of the Agreement read as follows:

"(a) Each regularly assigned train dispatcher will be entitled and required to take two 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. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five days per week. (Emphasis supplied.)

supported by any rule of the current agreement, and therefore, respectfully submits that the claims should be denied.

Data here submitted, and which is made a part hereof, has been submitted in substance to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties agree that the Amarillo Division assignment of 12 noon to 8:00 P. M. did not work on the Sunday dates mentioned in the claim. The Organization contends that (1) the position was blanked or combined with other dispatchers' positions on those dates, in violation of Rule 5 (f), which requires bilateral agreement on such changes; and (2) no extra employe being available, the Carrier should have used a relief man or the regular incumbents at overtime rates on the position, instead of blanking or combining it (Rules 5 (a) and (f)). The Carrier contends that the position was advertised and filled as a six-day one; and therefore no rules were violated.

If this was a seven-day position, we must hold with the Organization (except for one point, which is covered at the end of this opinion); if six-day, with the Carrier. Accordingly we have here a question of fact to be resolved from the evidence on the record.

Carrier's Notice No. 7 of November 20, 1950, in its first paragraph stated that the Amarillo Division position of trick train dispatcher was to work from Tuesday through Saturday, with rest days Sunday and Monday. Nothing was said about whether the position as such was to be seven-day or six-day. But the designation of Sunday and Monday as rest days affords a presumption of seven-day-ness—unless from other statements in the same or other notices one may decisively infer six-day-ness.

Notice No. 7 in its third paragraph also bulletined a second swing dispatcher position to relieve the Amarillo position on Monday. In this Notice there is no mention of Sunday relief for the Amarillo trick position. We may possibly infer from this that the Carrier intended not to work the position Sunday. And this inference may conceivably be buttressed by the fact that, in respect to a previously advertised but later canceled extra dispatcher position for the Amarillo duties, the Carrier on November 18, 1950, has issued a Notice stating there would be no Sunday work thereon.

Our question now boils down to this: Would the statements in the first and third paragraphs of the Notice of November 20 and the statement in the Notice of November 18 add up in employees' minds to a firm, definite notice that the new Amarillo trick dispatcher's position was a six-day one, with five days of work Tuesday through Saturday, no work at all on Sunday, and relief work on Monday?

We think that a reasonable answer to this question must be in the negative. The Carrier has a right under the Agreement to advertise and establish 5, 6, or 7 day positions as it wishes, including a job like the one it contends it set up in the instant case. But it also bears a corresponding obligation to make its meaning clear and unequivocal to its employees.

We do not believe that the Carrier adequately fulfilled this responsibility. All it would need to have done is to have included a definite statement of six-day-ness in its Notice of November 20. This it failed to do. As a result, the employees had no specific information on the point.

There remains to consider the penalty appropriate to Carrier's failure. In accordance with the preponderance of decisions on cases of this general sort, we think the claimants should receive pro rata rather than time and one-half pay for the hours requested. It is so ruled.

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 the Carrier failed to comply with the requirements of the Agreement.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1952.