

Award No. 6137

Docket No. TD-6197

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, 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 for and in behalf of Train Dispatcher J. H. Lowder, that:

(1) The Fort Worth and Denver Railway Company; The Wichita Valley Railway Company, hereinafter referred to as the Carrier, evaded and failed to properly apply the provisions of the Train Dispatchers' Schedule Agreement, effective May 1, 1950, when on Saturdays, October 20 and 27, 1951; November 3, 10, 17, and 24, 1951; and December 1, 8, 15, 22, and 29, 1951, it required Dispatcher J. H. Lowder to perform extra train dispatcher service—thus prevented him from working his regularly assigned position which he had obtained under the provisions of the Rules of the Agreement; and

(2) By reason of Carrier's elusory action, as set forth in above paragraph (1) of this claim, the Carrier shall now compensate Claimant J. H. Lowder for one day's pay at pro rata rate of his regular assignment for each day covered by this claim.

EMPLOYES' STATEMENT OF FACTS: There is in effect an agreement, effective May 1, 1950, between the parties to this dispute, covering Hours of Service and Working Conditions Governing Train Dispatchers. Said Agreement is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein. It will, hereafter, be referred to as the Agreement.

This claim is based on the provisions of Rule 6 (b) of the Agreement which reads:

"Rule 6 (b): Loss of time on account of hours of service law or in changing positions 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 employees exercising seniority."

During the period involved in this claim, Train Dispatcher J. H. Lowder was regularly assigned to what is known as No. 1 relief dispatcher position

"The Third Division, National Adjustment Board, has ruled 'time lost' under this provision means being deprived of the opportunity to perform services in the position which the individual acquired in the exercise of seniority. Any other interpretation of this rule would allow the carrier to work an employee off his assignment which he had acquired by exercise of seniority, as seldom or as often as the carrier saw fit and for as long or as short a period of time as convenient to the carrier without being penalized for such action."

Rule 6(b) is not applicable in the instant claim as alleged by the Employees because the Hours of Service Law is not involved. Then, too, there is no claim for loss of time in changing positions. Rule 6(b) applies to employment situation wherein an actual loss of time is suffered in changing from one position to another by reason of provisions of the Hours of Service Law or by direction of proper authority, neither of which exists in the instant dispute. Claimant Lowder lost no time and he did not change positions. He simply continued on the position which he acquired by the exercise of his seniority. The only change experienced by Claimant Lowder was that when the temporary position of Amarillo Division trick train dispatcher was assigned on October 16, 1951, he discontinued working as a telegrapher from 7:00 A.M. to 3:00 P.M. on Saturdays and worked as a trick train dispatcher from 5:00 A.M. to 1:00 P.M. on Saturdays to protect the relief day of the regularly assigned Amarillo Division trick train dispatcher to meet the requirement contained in Rule 5(d). Whatever inconvenience was experienced by Claimant Lowder in going to work on Saturdays at 5:00 A.M. instead of 7:00 A.M. resulted from the conditions of his employment. The right of the Carrier to make a change of assignment of Claimant Lowder, first relief trick dispatcher, to afford a relief day on Saturday for the regularly assigned Amarillo Division trick train dispatcher is fully covered by the opinion given in Third Division Award 1814, with Referee Sidney St. F. Thaxter, part of which is quoted below for ready reference:

"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 employees. 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."

The Carrier asserts that the alleged claims as submitted by the Employees are entirely without merit for they are not supported by any rule in the current agreement and requests that the Board so find and deny the claims.

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

(Exhibits not reproduced).

OPINION OF BOARD: Prior to October 16, 1951, the Claimant had a regular assignment to work as a relief dispatcher on Sundays, Mondays, Tuesdays and Wednesdays, and from 7:00 A.M. to 3:00 P.M. on Saturdays, as a telegrapher at dispatcher's rate. Thursdays and Fridays were his rest days.

On October 16, effective October 20, the Carrier established a new dispatcher's position and required the Claimant to fill that position from 5:00 A. M. to 1:00 P. M. on Saturdays, to and including December 29, 1951.

The claim is predicated on the seniority rules of the Agreement and specifically on that part of Rule 6 (b) which provides that "loss of time on account of changing positions by direction of proper authority shall be paid for at the rate of the position for which service was performed immediately prior to such change. * * *" The Employees rely on a long line of awards that hold that under such a rule an employee may not be required to suspend work on his regularly assigned position in order to work on another position, except in an emergency.

The Carrier says, however, that there was no violation of the Agreement for the reason that Rule 5 (d) authorized the Claimant to be assigned to work as a telegrapher on Saturdays only because no relief train dispatcher's work was available on that day, but that when such work became available it was the Carrier's duty to assign it to the Claimant and the Claimant's duty to perform it; and that if there is a conflict between Rules 6 (b) and 5 (d) the latter must prevail since it is special and specific in character.

Bearing in mind that Claimant was primarily assigned as a relief train dispatcher and that previous to October 16, 1951, he worked as a telegrapher on Saturdays only because there was no dispatcher's work available on that day, we do not deem it to have been improper to assign him to work as a dispatcher on the Saturdays when dispatcher's work was available. Any other conclusion would defeat the manifest purpose and clear meaning of Rule 5 (d).

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 Employee involved in this dispute are respectively Carrier and Employee 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 the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1953.