

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(a) The Baltimore and Ohio Railroad Company, hereinafter referred to as "the carrier," failed and continues to fail to comply with the provisions of Article 4, paragraph (c) of the currently effective agreement between the parties when in the re-establishment of a regular trick train dispatching position in its Newark, Ohio, train dispatching office, effective November 24, 1952, it failed to establish rest day relief service to afford rest day relief on said re-established trick train dispatcher position but instead on such rest days doubled the territory of that position with the territory of another trick train dispatcher assignment in violation of said Article 4, paragraph (c).

(b) The Carrier shall now pay to all train dispatchers adversely affected by the above cited violation of the agreement the difference between what they earned in other service with the Carrier, if any, and what they would have earned had the Carrier not violated the agreement to the extent claimed in paragraph (a) hereof because they were, by that violation deprived of the opportunity to perform train dispatcher work. Such payments to train dispatchers so affected shall be from the beginning of the violation starting on November 24, 1952, and until the violation ceases.

(c) A joint check of the Carrier's time rolls (Pay rolls) shall be made by the Carrier and the General Chairman of the American Train Dispatchers Association to determine those entitled to the payments required by paragraph (b) of this claim.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the Baltimore and Ohio Railroad Company and its train dispatchers represented by the American Train Dispatchers Association, effective July 1, 1921, including amendments thereto, covering hours of service and working conditions governing train dispatchers. Said agreement is on file with your Honorable Board and, by this reference, is made a part of this submission as though fully incorporated herein.

The rules of said agreement pertinent to the instant claim read as follows:

The Carrier submits that the Employees' reading of Article 4(c), the rule they rely upon here, is in fact a perverted reading alien to the original intention of the parties at the time the rule was negotiated. Actually, rather than a doubling of any dispatching territory here, there was in fact an undoubling accomplished by the establishment of the second trick dispatching position serving as the basis of the protest in this dispute.

On the basis of all that is contained herein, the Carrier submits that the claim found here rests upon a contrived reading of Article 4(c), a reading totally contrary to the intention of the rule. On this basis, the Carrier requests this Division to hold this claim as being one without merit and to deny it accordingly.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees' claim, in brief, is that Carrier violated the Agreement when, on November 24, 1952, it doubled the territory of the second trick Train Dispatcher in its Newark and Columbus, Ohio train dispatching offices on Saturday and Sunday of each week, to afford relief on another position, instead of assigning a Relief Train Dispatcher to afford such relief and as a result thereof Carrier compensate those who were entitled to perform this relief work, the difference between what they earned in other service with Carrier and what they would have earned had the violation not occurred.

It is contended in support of claims that on November 24, 1952 Carrier established a second trick Dispatcher position in its Newark, Ohio office, to work 3:00 P. M.-11:00 P. M., Monday through Friday each week, rest days Saturday and Sunday, on the territory designated, Lake Erie-Midland subdivision, which comprised that portion of Carrier's Newark Division between Newark and Sandusky, Ohio and between Columbus and Midland, Ohio.

That, at the same time, Carrier required the second trick Dispatcher on the C O territory, in addition to his own territory, to handle that portion of the L.E. and M. territory between Columbus and Midland on Saturday and Sunday of each week.

The Employees further contend that based upon Article 4(a) the assignment of two regular rest days to each Dispatchers' position is required and the filling of the position on such rest days; that the provisions of Article 4(c) were violated when it doubled the territory of other Dispatchers to afford the necessary relief; and that this relief must be furnished by including the two rest days within a regular relief assignment, or by the use of qualified extra Dispatchers, as provided in Article 4 (e).

Cited is Article 4 (c).

"The Company shall designate the rest days for each position in accordance with the foregoing paragraphs. Reasonable notice shall be given of change in assignment of the rest days. Doubling of territory for relief purposes will not be permitted."

Further that 4(a) requires establishment of two rest days for each regularly assigned Train Dispatcher; 4(d) requires that where relief requirements regularly necessitate four or more relief days per week, regular Relief Dispatchers shall be employed; and 4(e) provides for the use of extra Dispatchers when less than four days relief per week is available; but 4(c) prohibits the "doubling of territory" to furnish relief on such rest days, and that is alleged to be what the Carrier did in this case. Cited in support of these contentions are Awards 54, 69, 2454 and 5069.

Respondent Carrier in support of its position states that the present dispute dates back to establishment of the second trick operation and such was created by reason of abnormal conditions for five days a week on L. E. and M. territory and that no such conditions existed on Saturday and Sunday. That it was later abolished by reason of a coal strike and later reestablished

at the termination of said strike. Cited are Awards 4446, 6184, 5331 and 6187.

That Carrier was within its rights in establishing a second trick Dispatcher in the Newark office, and assigning to that position certain Lake Erie and Midland Subdivisions' dispatching work then being performed by other dispatchers on the second trick at Newark and Columbus offices. That Carrier could have avoided the cause of this dispute by abolishing the disputed new five days position and returning to the situation that existed just before the new position was established. If this had been done Petitioners would have had the burden of proving a violation of agreement. That nowhere in Article 4(c), nor in the entire Agreement, is there any restriction to bar the establishment of a position of five days if such a position is needed or even for less days if the situation justifies. Article 4(a) requires that "each regularly assigned train dispatcher will be * * * required to take two (2) regularly assigned days off per week as rest days * * *. Such assigned rest days shall be consecutive to the fullest extent possible." Here, two consecutive rest days—Saturday and Sunday—were assigned the new positions. That nothing in that Article directs the Carrier to employ unneeded dispatchers for two more days each week. The new position was put on because of increase in business on the five days, or in accord with Carrier's prerogative to increase or decrease its dispatching forces to meet operational needs, as per Awards 4446 and 6187.

That there is no showing by Petitioner that assistance was needed on other than Mondays through Fridays. If not required on Saturdays and Sundays, Carrier was not required to make the position a seven-day one and set up a rest day relief position to relieve it on its two rest days with nothing to do, citing Award 6184.

Apparently Article 4 is clear and unambiguous and supports Petitioner's contention. Respondent Carrier's position may present a logical plan of operations, however, the remedy is by negotiation as we view it. The meaning of the provisions of Article 4 are clear and 4(c) forbids the action taken here. Award 5069 passes on the question presented here more clearly than other awards cited in our opinion and we reaffirm the holding therein. Also see Awards 54 and 2454 and dissent to Award 6839.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.