Award No. 7211
Docket No. TD-7167

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ERIE RAILROAD COMPANY

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

(a) The Erie Railroad Company, hereinafter referred to as "the Carrier" violated the provisions of the current Agreement between the parties and specifically Article 3 (c) when, effective May 2, 1953, the Carrier abolished Relief Position No. 5 in its Jersey City, New Jersey train dispatching office and combined the Greenwood Lake Division dispatching territory with the Northern Railroad, New Jersey and New York Railroad dispatching territory for relief purposes between the hours of 6:15 A. M. and 2:15 P. M., on Saturdays between May 2, 1953 to and including June 1, 1953.

(b) 1. By reason of said violation of the Carrier train dispatcher H. D. Terwilliger, incumbent of abolished Relief Position No. 5, was forced to displace train dispatcher F. L. Spratt from his regular assignment on Relief Position No. 3, Spratt was forced to displace train dispatcher G. C. Beckwith from his regular assignment on Relief Position No. 4, Beckwith was forced to displace train dispatcher J. F. O'Connor from his regular assignment on third trick Main Line West District and O'Connor was forced to return to the extra list, therefore, each of these men lost the opportunity to perform compensated service in his regular assignment to which he had a contractual right.

2. The Carrier shall now be required to pay train dispatchers H. D. Terwilliger, F. L. Spratt, G. C. Beckwith, and J. F. O'Connor an additional day's pay for May 2, 1953, and each succeeding work day to and including June 1, 1953, at pro rata rate of trick train dispatcher.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Erie Railroad Company and their train dispatchers represented by the American Train Dispatchers Association, effective April 8, 1942, including amendments thereto, governing hours of service and working conditions of train dispatchers. A copy of this agreement is on file with your Honorable Board and by this reference is made a part of this submission as though fully set out herein.

For the convenience of the Board the following rules of the agreement pertinent to this dispute are quoted as follows:

levy of a penalty, i.e., a fine on the Carrier rather than making whole an individual or group for losses suffered because of a violation."

It is clear that neither the rules nor the Awards of this Board support the instant claim for double penalty or assessment of a fine against the Carrier.

In view of the facts presented and for the reasons stated together with the authorities cited herein, it is clear that these claims are without valid basis and should be denied.

The Carrier submits that all data in support of its position in this case has been discussed with or is known to the Organization or the employes.

(Exhibits not reproduced).

OPINION OF BOARD: This case involves two first-trick dispatcher positions maintained by the Carrier in its Jersey City office. The duties of these positions related only to the operations of two commuter lines—the Greenwood Lake Division (hereinafter called Greenwood), and the Northern Branch—New Jersey and New York Railroad (hereinafter called Northern). Prior to May 2, 1953, on Monday through Saturday, there was one first-trick dispatcher assigned to Greenwood and another assigned to Northern. On Sunday, one first-trick dispatcher handled both Greenwood and Northern. On second and third tricks, every day of the week, one dispatcher handled both divisions.

The regular first-trick assignments for the two divisions were Tuesday-Saturday, with Sunday and Monday as relief days. On these days, the positions were covered by dispatchers assigned to regular relief positions. There were five of these regular relief positions, which provided all necessary relief on two other lines in addition to those involved here.

The number of trains operating over Greenwood and Northern has decreased steadily over a number of years. This has affected the dispatchers by causing the duties of both lines to be combined in one dispatcher position on more and more assignments. Such combination had occurred on second trick on week days and first trick on Sundays prior to the further combination which gave rise to the present case and prior to the negotiation of the rule on which the claims are based. Due to a still further reduction in the number of trains, the Carrier decided, effective May 2, 1953, to combine the two first-trick dispatcher positions on Saturday into one position, just as it then existed on Sunday. This was accomplished by changing the rest days of the first-trick Greenwood dispatcher from Sunday and Monday to Saturday and Sunday. This change eliminated the need for a relief assignment for first trick on Monday on Greenwood, which was the Monday assignment for Relief Position No. 3. Carrier replaced this assignment with an assignment from Relief Position No. 5; since this left Relief Position No. 5 with only four assignments, it was abolished and the four assignments accrued to extra dispatchers, according to Article 3 (f).

The final act in the decline of dispatching activity on the first trick occurred on June 2, 1953, when the Carrier combined the work of both Greenwood and Northern into one position on the remaining days of the week—Monday-Friday—and established Sunday and Monday as relief days for this position as they had been before.

As a result of the combining of the two Saturday first trick positions into one, the Dispatcher performing the combined service claimed an additional day's pay for each Saturday worked between May 2 and June 2 under Article 3 (c), which reads: "The doubling of territory for relief purposes will not be permitted except in extreme or unavoidable emergencies." The Carrier paid this claim.

The abolition of Relief Position No. 5 set off a chain of displacements—Terwilliger, who had Relief Position No. 5, displaced Spratt, Relief Position

No. 3; Spratt displaced Beckwith, Relief Position No. 4; Beckwith displaced O'Connor from his assignment; and O'Connor went to the extra list. Each of these men claims an extra day's pay for May 2, 1953 and each succeeding work day to and including June 1, 1953, on the theory that they were prevented from working in their regular assignments on these days as the direct result of the Carrier's violation of Article 3 (c) in combining the two Saturday first-trick positions into one.

These claimants lost their regular assignments because the decline in Carrier's operations required less employes. Had the Carrier combined the first-trick duties on every day at once instead of beginning with Saturdays and adding the rest of the days a month later, the claimants would have been in precisely the same position, and would have had no cause for complaint. There is some question whether Carrier's action violated the intent of Article 3 (c) at all; if it did, it was the employe who performed extra service who was primarily affected. The interests of these claimants are too remote from the results sought to be accomplished by Article 3 (c) to entitle them to the remedy they seek for its breach. This is all the more true where, as here, the record shows no financial loss to any of the claimants.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of January, 1956.