

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

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

The Missouri Pacific Railroad Company, hereinafter referred to as "the Carrier," shall pay to E. K. Hunt, who is employed by the Carrier as a regularly assigned train dispatcher in its Monroe, Louisiana office two days' pay at pro rata rate of his position for time lost on Thursday and Friday, July 21 and 22, 1954, by unilateral action of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date of August 1, 1945 (Reprinted January 1, 1948), a copy thereof and subsequent amendments thereto are on file with Third Division of the Board and are hereby made a part of this submission the same as though fully incorporated herein.

For ready reference by the Board the rules pertinent to this dispute are quoted below:

"ARTICLE 3

"(a) REST DAYS

"(Effective September 1, 1949)

"Each regularly assigned train dispatcher will 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. The Carrier may assign non-consecutive rest days only in instances where consecutive rest days would necessitate working any train dispatcher in excess of (5) days per week. Any regularly assigned train dispatcher required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days. . . ."
(Emphasis ours.)

"(b) REST DAY RELIEF SERVICE

"(Effective September 1, 1949)

tains any daily, weekly, monthly or annual guarantee. Section (a) merely specifies how compensation will be computed and Section (c) is not applicable because the Hours of Service Law is not involved in the case and the claimant did not change positions.

However, we are of the opinion that the Agreement contemplates five days of work and two rest days in seven-day periods beginning with the first day of the week a position is bulletined to work. On this basis the Carrier maintains there was no time lost in this case. As shown by the chart entered supra in this submission the claimant had five consecutive work days and two consecutive rest days in the seven-day period designated (1) and he had five days of work and two consecutive rest days in the seven-day period designated (2). The only difference in the two periods is that in (2) the rest days were shifted as compared with (1) and this resulted in the work days not being consecutive; but there is no provision in the Agreement prohibiting this. In the seven-day periods designated (A) and (B) which were the official work weeks following the change of rest days the claimant had five consecutive work days and two consecutive rest days in each. He did not lose any time.

It is the position of the Carrier that there is no Agreement requirement or authority for the payment of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was a regularly assigned train dispatcher with assigned hours 5:00 A. M. to 1:00 P. M., Tuesday through Saturday with Sunday and Monday the rest days assigned to his position. He worked his regular assignment Tuesday, July 13, through Saturday, July 17, 1954, and took off his two rest days Sunday and Monday, July 18 and 19. The Carrier issued notice that effective midnight, July 19, 1954, the rest days of Claimant's position were changed from Sunday and Monday to Thursday and Friday of each week. After having been off Sunday and Monday, July 18 and 19, Claimant was required to take off Thursday and Friday, July 22 and 23, having worked only two days since being off on his previously assigned rest days.

Rules cited by the Employees as pertinent are as follows:

"ARTICLE 3

"(a) Rest Days

(Effective September 1, 1949)

"Each regularly assigned train dispatcher will 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. The Carrier may assign non-consecutive rest days only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week. Any regularly assigned train dispatcher required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days. . . ."

"ARTICLE 7

"(a) Basis of Employment

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

"(b) Determining Daily and Hourly Rate

"(Effective September 1, 1949)

"The daily rate of pay will be arrived at by multiplying the monthly rate by twelve (12) and dividing the result by 261. To determine the straight time hourly rate divide the monthly rate by 174.

* * * * *

"(c) Time Lost Account Hours of Service Law

"Loss of time on account of Hours of Service Law, or 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."

There is no dispute that Carrier's action was a change of assignment, not a change of position. Nor did the Employees in handling the claim on the property deny the right of the Carrier to change rest days.

Employees contend that when rest days are changed Claimant should not be required to lose time as herein and make claim for two days lost at pro rata rate for Thursday and Friday, July 22 and 23. Employees also contend that Claimant, pursuant to Article 3 was entitled to perform service to the extent of five (5) consecutive working days in any period of one week (7 days) before being required to take either one or both of the assigned rest days; that Article 3 contemplates that a normal week shall be composed of five (5) consecutive work days and two (2) rest days. Employees in their submission deny the right of the Carrier to change rest days but cite no specific Agreement provision.

Carrier contends that no provision in the Agreement prohibits it from changing rest days assigned a position and that therefore not having limited itself by contract it had a right to do so. Carrier also contends that no provision of the Agreement requires payment for the two days pay in issue for which no service was performed. In addition Carrier maintains that there is no guarantee of 5 days of work, consecutive or otherwise, in any specified period of time.

The effect of a change in rest days upon the work week, in several types of cases, has been the subject of numerous disputes which have been considered by this Division, and a great many awards have been cited by the parties to support their contentions. An examination of these awards discloses implacable conflict of opinion. Without attempting to distinguish or relate all of the previous awards, suffice it to say that this opinion will confine itself to the facts of record and their pertinence to applicable Agreement rules.

With respect to the controversy concerning the Carrier's right to change rest days we must rule in favor of the Carrier position. We find no rule in the Agreement prohibiting such action and whatever managerial rights are not removed or restricted therein continue to inhere in management for free exercise by it. Indeed, the handling of this claim on the property indicated the employees' acceptance of this finding.

Having upheld the Carrier's right to change rest days it necessarily follows that such action changes the work week and thereby changes the assignment but not the position. Article 7 (c) is therefore not applicable, the position not having been changed.

As we read the plain language of Article 3 (a) it provides that a regularly assigned train dispatcher is entitled to take two regularly assigned days off per week as rest days and further that a regularly assigned dispatcher required to perform service on the rest days assigned to his position will be paid at the rate of time and one-half for service performed on either or both such rest days. That is not the factual situation in this docket. Here the change in assignment resulted in Claimant taking his rest days before he would have been entitled to them under his old assignment. His new work

week now commenced on Saturday whereas his old work week commenced on Tuesday and we can find no violation of Article 3 (a) in Carrier's action herein.

As we read Article 3 (a) it does not guarantee any specified daily, weekly, or monthly salaries. All it does is to provide that the work week consists of five or seven days with two consecutive days of rest, with one exception noted not here involved. There is no requirement that the 5 work days be consecutive. Projecting the work week backward or forward from the effective date of the change cannot change the result which was that the Claimant had 2 consecutive rest days out of seven and 5 days of work only non-consecutive in the one span of 7 days where the new assignment overlapped the old.

The Claimant here is designated as a monthly employe by reason of his monthly rate but his compensation is computed on a daily basis. It is entirely conceivable that the average number of days worked in any month could vary from days worked in another month.

The claim is before us on the basis of "time lost" and based upon the foregoing conclusions we can find no "time lost" and a denial award is indicated.

In finding and holding as it has above it must be clearly understood that the Board does not intend that this award and opinion be interpreted in a way that could be prejudicial to the rights of employes and contrary to the general intent of the agreement i.e. by creating new assignments by a change of rest days in a manner so as to continuously deprive employes of rest days. The Agreement is intended to afford appropriate protection to employes and at the same time permit necessary operating flexibility to the Carrier.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1957.