

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

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**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**

**DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

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

(a) The Duluth, Missabe and Iron Range Railway Company, sometimes hereinafter referred to as "the Carrier," violated the provisions of Article 3 (f) of the currently effective Agreement between the parties hereto when, beginning with the week of Sunday, September 19, 1954, by unilateral action in disregard of the above referred to Article 3 (f), it combined and/or blanked three trick train dispatcher positions in its Duluth, Minnesota train dispatching office to effect rest day relief thereon on Sundays of each week.

(b) The Carrier continued to violate the provisions of Article 2 (f), (Supplemental Agreement, effective February 1, 1954,) and Article 3(a), (b), (c), (d), (e) and (f), also Article 7 (b) of the currently effective Agreement when it failed and refused and continues to fail and refuse to pay the train dispatchers listed in Section (c) of this Statement of Claim the compensation due them as a result of the violation of Article 3 (f) set forth in Section (a) hereof.

(c) The Carrier shall now pay the following Claimants at the trick train dispatcher rate:

(1) Train Dispatcher A. J. Sullivan—The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Sunday, September 26, 1954, and for each succeeding Sunday up to and including Sunday, October 31, 1954, as provided by Article 2 (f) account being required to perform service on other than his regular assignment.

(2) Train Dispatcher R. E. Johnson—The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Friday, September 24, 1954, and each succeeding Friday up to and including Friday, October 29, 1954, in accordance with Article 3 (b) for service performed on one of his regularly assigned rest days.

(3) Train Dispatcher J. N. LaFave—(a-3) The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Sunday, September 26, 1954, and

each succeeding Sunday up to and including Sunday, October 31, 1954, in accordance with Article 2 (f) for service performed on other than his regular assignment.

(b-3) The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Wednesday, September 22, 1954, and each succeeding Wednesday up to and including Wednesday, November 3, 1954, in accordance with Article 3 (b) for service performed on one of his regularly assigned rest days.

(4) Train Dispatcher J. R. Lyons—The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Monday, September 20, 1954, and each succeeding Sunday and Monday up to and including Monday, November 1, 1954, in accordance with Article 3 (b) for service performed on his assigned rest days.

(5) Train Dispatcher A. C. Hanson—(a-5) The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Sunday, September 19, 1954, in accordance with Article 2 (f) for service performed on other than his regular assignment.

(b-5) The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Monday, September 20 and Tuesday, September 21, 1954, and each succeeding Monday and Tuesday up to and including Tuesday, November 2, 1954, in accordance with Article 3 (b) for service performed on his regularly assigned rest days.

(6) Train Dispatcher E. C. Brown—The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Thursday, September 23 and Friday, September 24, 1954, and each succeeding Thursday and Friday up to and including Friday, October 29, 1954, in accordance with Article 3 (b) for service performed on his regularly assigned rest days.

(7) Train Dispatcher M. H. Burm—(a-7) At the pro rata rate for Sunday, September 19, 1954, for the right to perform rest day relief service when third trick Missabe Division combined with third trick Iron Range Division in violation of Article 3 (f).

(b-7) For Monday, September 20, 1954, at the pro rata rate, trick train dispatcher rate and for Tuesday, September 21, 1954, the difference between the telegrapher rate he was paid and the pro rata rate trick train dispatcher rate to which he was entitled for the right to perform rest day relief service on third trick Iron Range Division when available and when such service was performed by a regularly assigned train dispatcher on his assigned rest days in violation of Article 3 (a) and (e).

(c-7) For Wednesday, September 22, 1954, the difference between the telegrapher rate he was paid and the pro rata rate, trick train dispatcher rate to which he was entitled for the right to perform rest day relief service on second trick, Iron Range Division when such service was performed by a regularly assigned train dispatcher on his assigned rest day in violation of Article 3 (a) and (e).

(d-7) For Friday, September 24, 1954, the difference between the telegrapher rate he was paid and the pro rata rate, trick train dispatcher rate to which he was entitled for the right to perform rest day relief service on first trick Iron Range Division when such service was performed by a regularly assigned train dispatcher on his assigned rest day in violation of Article 3(a) and (e).

(e-7) For Sunday, September 26, 1954, and each succeeding Sunday up to and including Sunday, October 31, 1954, at trick train dispatcher pro rata rate for the right to perform service on first trick, Iron Range Division when that position was blanked or combined for rest day relief purposes in violation of Article 3 (f).

(8) Train Dispatcher J. E. Girouard, Jr.—For Sunday, September 26, 1954, and each succeeding Sunday up to and including Sunday, October 31, 1954, the difference between the telegrapher rate he was paid and the trick train dispatcher rate to which he was entitled for the right to perform rest day relief service on second trick Missabe Division when that position was blanked or combined with another position to effect rest day relief in violation of Article 3-(f).

(9) Train Dispatcher J. H. Koors—(a-9) At pro rata rate for Tuesday, September 21 and Wednesday, September 22, 1954, for loss of time under Article 7-(b) due to Carrier's action in changing rest days of other positions which had been a part of his regularly assigned relief train dispatcher work schedule in violation of Article 3 (d) and (f).

(b-9) The difference between the pro rata rate which he was paid and the time and one-half rate to which he was entitled for Monday, September 20, Thursday, September 23 and Friday, September 24, 1954, and each succeeding Monday, Thursday and Friday up to and including Monday, November 1, 1954, for the performance of service on other than his bulletin assignment under the provisions of Article 2-(f) and which was caused by a violation of Article 3-(f).

(c-9) The difference between what he was paid at pro rata rate of the trick train dispatcher's rate and the time and one-half rate of the trick train dispatcher's rate to which he was entitled for Saturday, September 25, and Sunday, September 26, 1954, and for each succeeding Saturday and Sunday up to and including Sunday, October 31, 1954, for service on the assigned rest days of his bulletined assignment which he held prior thereto under Article 3-(a) and which assignment was changed because of a violation of Article 3-(f).

**EMPLOYEES' STATEMENT OF FACTS:** There is an Agreement between the parties, bearing the effective date of September 1, 1952. Said agreement was supplemented by a supplemental agreement effective February 1, 1954, amending Article 2 of the September 1, 1952 Agreement by adding Paragraph (f) to that Article. Both are on file with your Honorable Board and will hereinafter sometimes be referred to as "the Agreement," and by reference are made a part of this submission the same as though fully set out herein. For ready reference Agreement rules, or portions thereof material to this dispute are hereinafter set out.

**ARTICLE 2.** (Paragraph (f) Supplemental Agreement effective February 1, 1954)

(f) An assigned Train Dispatcher required to work a position other than the one he obtained in the exercise of his seniority, except an assigned Train Dispatcher who is used on the position of Chief Train Dispatcher, shall be compensated therefor at the overtime rate of the position worked; however, except as provided by Article 7 (b), of the master agreement effective September 1, 1952, no additional payment shall be made to such Train Dispatcher due to not having worked his regular assignment.

"The record conclusively discloses the abolishment of the assignments involved was done for the reason that during the hours involved, i.e., 8:00 A. M., Saturdays, to 11:59 P. M. Sundays, due to a considerable change in business and the number of trains handled, the work load of the dispatchers had decreased to the point that only one set was necessary to efficiently and economically handle the situation."

As stated in the Carrier's Statement of Facts the bulk of the Carrier's business comes from the iron ore mining industry. In 1954 mining operations were well below normal with mines working only four or five days per week, and loading at the mines on weekends was practically at a standstill. Consequently, the Carrier's operations on weekends, particularly on Sundays, was sharply reduced.

Listed on the attached Exhibits D-1 and D-2 are the number of train orders issued by dispatchers on certain days during the 1954 "ore shipping season", and two months of the "winter season." Exhibits D-1 and D-2 provide a reasonably accurate guide as to the normal work load for two sets of dispatchers as compared to the normal work load for one set of dispatchers during the year of 1954.

It is evident from the number of train orders issued that on a typical day two sets of dispatchers handle about 250 train orders. It is also evident from this list that one set of dispatchers at no time issued as many as one-half of this amount on the Sundays during the period in question, and on most of the Sundays (four out of a total of seven) they issued less than one-fourth of that amount.

Although the number of train orders issued provide ample evidence that dispatchers were not burdened with an excessive amount of work on Sunday between September 19th and the end of the "ore shipping season", that is not the real issue involved in this dispute—the employees have not based their claims on a contention that they were overburdened. The real issue is the principle involved, i.e., the right of the management to distribute the work among the employees in the interest of efficiency and economy, and the figures cited are for the purpose of showing that the one set of dispatchers on Sunday were eliminated only for the purpose of making a bona fide reduction in force because there was sufficient work for only one set of dispatchers on Sunday during the period here involved, and not, as claimed by the employees, for the purpose of avoiding the assignment of a relief employee on such days.

Whether so intended or not, the instant claims can only be regarded as an effort by the employees, through an interpretation of your Board, to usurp functions that normally and necessarily belong to Management. This cannot be made more evident than it is in the statement made by the General Chairman when he said that Article 3, (f) required that the Carrier secure the consent of the General Chairman, before it could rearrange the force, even if the dispatchers' work on Sunday had disappeared entirely.

The Carrier submits it has not surrendered its managerial prerogatives to the extent claimed by the employees, and in the absence of indisputable evidence to the contrary, in the form of language in the Agreement that is susceptible to no other interpretation, a denial award must be rendered. (See First Division Award 15119, Third Division Awards 6944, 6945, 6946, 6947 and 6948).

All Matters referred to herein have been the subject of correspondence and/or discussion with the Employees' Representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** No point would be served by a detailed repetition here of facts which are set out in full in the submissions. In short, prior

to September 19, 1954, six trick train dispatcher positions were assigned by Carrier in its Duluth train dispatching office—two dispatchers on each of three shifts, seven days a week. Rest day relief for these six positions was accomplished by two regularly assigned relief positions and the use of one extra man. Because of a substantial decrease in the amount of traffic, and consequently the amount of dispatching service required, on Sundays, Carrier decided to eliminate one set of dispatchers on each of the three shifts on Sunday. It accomplished this by bulletin notices which abolished one of the regular relief positions and established a new one in its stead, changed the rest days of other regular positions, and eliminated the two days of relief work formerly performed by the extra man. The operational effect of the changes was that where formerly on Sundays there had been one dispatcher assigned to the Missabe Division and one to the Iron Range Division one each shift, after September 19 there was only one dispatcher on each shift who handled all of the dispatching work on both Divisions.

Petitioner contends that this action amounted to the combining or blanking of positions for relief purposes in violation of Article 3(f) of the Agreement, which provides:

“Combining or blanking positions for relief purposes shall not be permitted except as agreed to between the Superintendent and General Chairman.”

It is clear from the record that no such agreement was reached. Claims are filed on behalf of the extra man for the work he lost and for regular dispatchers who performed work on both Divisions on Sundays. In addition, claims are filed on behalf of these and other regular dispatchers on the ground that changing their rest days for the purpose of eliminating the three employees on Sundays was improper and therefore they were required to work on their original rest days in violation of the Agreement.

Carrier contends that it did not blank or combine positions for relief purposes, but merely re-arranged its force to meet reduced operational requirements.

Nothing in the record casts doubt upon Carrier's statement that the volume of dispatching work on Sundays did not justify the employment of two dispatchers. However, Awards 2454, 5069 and 7013, spanning a period of some eleven years, held that rules prescribing the “doubling of territory for relief purposes” were violated under circumstances similar to those in this case. We see no real distinction between those rules and the prescription in Article 3(f) against combining positions for relief purposes, and thus feel that this case is governed by the awards cited. Award 6839 reached the opposite conclusion but was specifically rejected in Award 7013, which reaffirmed the holding in Award 5069 and referred favorably to the dissent in Award 6839. In view of these prior holdings of the Board, we find that Carrier's action in this case was in violation of Article 3(f).

We do not agree that the violation found supports all of the claims. In our view, only the extra employee who lost work because of the violation, and the employees who were required on Sundays to do the work of both Divisions are entitled to be recompensed because of the violation of Article 3(f). The fact that Article 3(f) was violated does not automatically result in a violation of Article 3(d). We are not prepared to say that the changes of rest days in this case were not necessary to meet service requirements. Article 3(f) covers a specific situation and should not be broadened to support claims based on changes of rest days. See Award 7211.

In summary, we sustain the claim of the extra man, M. H. Burm, for the difference between what he actually earned between September 19, 1954 and November 4, 1954, and what he would have earned had the Carrier continued to assign two dispatcher positions on each shift on Sundays during this period. Similarly, we sustain the claims of those dispatchers who, during the

same period, were required on Sundays to perform the total dispatching work for both the Missabe and Iron Range Divisions, for the difference between the pro rata rate and time-and-one-half. All other claims are denied.

**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 Employees 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 to the extent indicated in Opinion.

#### **AWARD**

Claim sustained in part and denied in part in accordance with Findings and Opinion.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST:** A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.