Award No. 8824

Docket No. TD-7866

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) The Gulf, Colorado and Santa Fe Railway Company, hereinafter referred to as "the Carrier," violated the currently effective Agreement between the parties to this dispute, including Article II, Sections 10-b and 14, when on Friday, May 21, 1954, it denied unassigned Train Dispatcher R. E. Johnson his right to perform dispatcher service on second trick position, Galveston side, beginning at 3:00 P. M. Friday, May 21, 1954, a position for which he was qualified, available and willing to perform service.

(b) Carrier shall now compensate unassigned Train Dispatcher R. E. Johnson a day's pay at pro rata rate for Friday, May 21, 1954, a day that he was deprived of train dispatcher work to which he was contractually entitled under the rules of the Agreement but which instead was performed by Mr. J. W. Fewell a junior unassigned train dispatcher.

EMPLOYES' STATEMENT OF FACTS: Prior to Sunday, May 23, 1954, unassigned Train Dispatcher R. E. Johnson performed service as follows:

Friday	—May 14, 1954—3:00 p. m. until 11:00 p. m.
Saturday	—May 15, 1954—3:00 p. m. until 11:00 p. m.
Sunday	—May 16, 1954—9:00 p. m. until 5:00 a. m., May 17
Monday	—May 17, 1954—No Service
Tuesday	—May 18, 1954—7:00 a. m. until 3:00 p. m.
Wednesday	—May 19, 1954—5:00 p. m. until 1:00 a. m., May 20
Thursday	—May 20, 1954—No Service
Friday	—May 21, 1954—No Service
Saturday	—May 22, 1954—6:00 a. m. until 2:00 p. m.

(3) Where a practice is widespread and well established the only reasonable inference is that both parties have acquiesced in the practice. See Award No. 6607.

The Carrier has also presented evidence that its practice under the agreement rules relied upon by the Employes has been widespread and well established.

Without prejudice to its position, as previously set forth herein, the Carrier desires to point out that even if Claimant Johnson had a prior right under any rule in the Dispatchers' Agreement to provide rest day relief from 3:00 P. M. to 11:00 P. M. on Position No. 39 on Friday, May 21, 1954, which the Carrier does not concede, and had been so used, he (1) would not have had sufficient rest to return to his temporary assignment on Relief Position No. 1 commencing at 6:00 A. M. on Saturday, May 22 and (2) would have been required by the terms of Article IV, Section 7 of the Dispatchers' Agreement, to again provide rest day relief on Position No. 39 on Saturday, May 22, following which he also would not have had sufficient rest under the Hours of Service Law to protect Relief Position No. 1 commencing at 6:00 A. M. on Sunday, May 23. While the Employes failed to indicate, during the handling of this dispute on the property, what handling in their opinion should have been given Claimant Johnson on either May 22 or May 23 in the event he had been used to protect rest day relief on Position No. 39 on May 21 in line with their contention, it is crystal clear that Mr. Johnson would have lost a day's work before he could have possibly returned to the temporary vacancy on Relief Position No. 1. In other words, Claimant Johnson did not suffer any loss in pay by not being used to protect Position No. 39 on May 21, 1954, and there is no basis for the claim in his behalf for one day's pay.

In conclusion, the Carrier respectfully reasserts that the Employes' claim in the instant dispute is entirely without support under the governing agreement rules in effect between the parties hereto and should, for the reasons previously expressed herein, be denied in its entirety.

All that is contained herein is either known or available to the Employes or their representatives.

(Exhibits not Reproduced.)

OPINION OF BOARD: Claimant a Train Dispatcher, not regularly assigned at Carriers Galveston, Texas, office, having completed the protection of a temporary vacancy and rested under the Federal Hours of Service Act, displaced Dispatcher Fewell, also not regularly assigned, on a temporary vacancy on Position No. 1 as of Tuesday, May 18, 1954. Claimant worked said position May 18 and 19; but because the rest days thereof were Thursday and Friday, he rested on May 20 and 21.

At said Office Position No. 39 had two rest days that were not part of any regular relief assignment. These days fell on May 20 and 21, 1954. Work thereon was performed by Dispatcher Fewell. Under the Federal Hours of Service Act Claimant could not work on Nay 20, but he contends that he rather than Fewell should have worked Position No. 39 on May 21.

Under these facts the contentions of the Parties and the issues they dispute are the same as those in Docket TD-7865, decided by this Division's Award No. 8823. Accordingly, the Board's Opinion and Findings in the instant case must be and are the same as in said Award. By this referee the Opinion and Findings in Award No. 8823 are incorporated herein and made part hereof. The instant Claim cannot be sustained.

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

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of May, 1959.