

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Howard A. Johnson, Referee

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**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**

**TENNESSEE CENTRAL RAILWAY COMPANY**

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

(a) The Tennessee Central Railway Company, hereinafter referred to as the "Carrier", failed and continues to fail to comply with the provisions of the currently effective Agreement between the parties, particularly Article 3 thereof when, by unilateral action it removed the rest day relief service from the first trick dispatcher position, with hours from 6:45 A. M. to 2:45 P. M., effective December 1, 1955, by its Bulletin No. 11, dated November 23, 1955; and removed the rest day relief service from the third trick dispatcher position, with hours from 10:45 P. M. to 6:45 A. M., effective December 3, 1955, by its Bulletin No. 53, dated November 25, 1955.

(b) The Carrier shall now pay to all train dispatchers adversely affected by the above cited violations of the Agreement rules, one day's pay at pro rata rate for each day such violations continue commencing with the dates on which such violations began, as specified in paragraph (a) of this claim and ending when such violations are corrected, and

(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.

**EMPLOYES' STATEMENT OF FACTS:** An Agreement between the parties, effective February 1, 1946, and subsequent revisions thereof are on file with your Honorable Board and, by this reference, are made a part of this submission as though fully incorporated herein. Said Agreement will hereinafter be referred to as the "Agreement".

Pertinent rules of the Agreement read as follows:

The position of Employees is set forth in the General Chairman's letter of April 11, 1956 (Carrier's Exhibit No. 7) in which he invokes those portions of Article 3(a) reading "Each regularly assigned train dispatcher will be entitled and required to take two regularly assigned days off per week as rest days, \* \* \*", and "The Railway Company shall designate established rest days for each position." That these provisions have been complied with is perceived by a casual examination of Bulletin No. 11 (Carrier's Exhibit No. 1).

Employees also invoke Article 3(c) reading "Each train dispatcher's position shall be considered a 'relief requirement' as referred to herein." Carrier again refers your Board to Bulletin No. 11 from which it will be observed that a third trick train dispatcher position and a first trick train dispatcher position is non-existent on Saturday and Sunday, respectively, and Article 3(c) could have application only when there is a train dispatcher position in existence to which it can apply.

Employees' contention is that Article 3(c) requires that a train dispatcher position must be worked seven days per week, but Carrier submits that such requirement is not to be found. Employees cannot read into the rule something which is not there. It hardly needs to be pointed out that had the parties intended to incorporate within the agreement a guarantee of seven days' work per week on each train dispatcher position, it would have been an easy matter to have so provided, but they did not do so.

Employees' professed belief that their claim is supported by your Awards Nos. 54, 2454, 5069 and 7013 is not shared by Carrier, as they all involve the performance of certain train dispatcher duties by a train dispatcher on duty which are not normally performed by him on other days of the week, whereas in the instant case no train dispatcher duties are performed on the shifts in question by anyone. Also in those cases Employees relied heavily upon a rule precluding the doubling of territory for relief purposes, which rule was proposed when the agreement was negotiated on this property, but never adopted.

Carrier submits that the claim made in this case is not supported by the rules and respectfully requests that it be denied.

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Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issue or issues.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

(Exhibits not Reproduced.)

**OPINION OF BOARD:** The question involved is whether the Carrier violated Article 3 of the Agreement when it removed the rest day relief service from the first trick dispatcher position, with hours from 6:45 A. M. to 2:45 P. M., effective December 1, 1955, and when it removed the rest day relief service from the third trick dispatcher position, with hours from 10:45 P. M. to 6:45 P. M., effective December 3, 1955.

As originally filed with the General Superintendent by the General Chairman on January 14, 1956, the claim was as follows:

"In view of the fact that Section C-Article 3 is being violated in not furnishing relief for third trick dispatcher position Saturday Nights, and first trick dispatcher position Sundays, I hereby make standing claim in favor of C. R. Trammel, extra dispatcher for time lost from December 3rd, 1955, account blanking of these positions."

The claim was denied, and on February 23, 1956, the General Chairman appealed to the Supervisor of Wages by a letter in which he said:

"Please note attached copy of claim in favor of Mr. C. R. Trammel extra train dispatcher for time lost since December 3, 1955, account 'blanking' positions of their trick train dispatcher Saturday nights and first trick Sundays. This claim declined by Mr. Manning.

\* \* \* \* \*

"We think claim is justifiable, respectfully appeal same to you and request conference to discuss same."

After further correspondence and negotiations the claim was denied by the Supervisor of Wages, and seven days later he was informed by a letter from the General Chairman that the claim was referred to the President of the Association for further handling under the Railway Labor Act.

The claim filed here sets forth the claim essentially as handled on the property, except that it does not mention Trammel, but is expanded to cover "all train dispatchers adversely affected".

If your Honorable Board does assume jurisdiction of this proceeding, not the one handled on the property and must therefore be dismissed. This Board's jurisdiction, of course, is to determine questions already handled on the property. However the claim here presented is not entirely different from that handled on the premises; it has merely been expanded as above mentioned, to include, not only Trammel, but any others adversely affected.

In Award 5151 (Referee Carter) this Division said:

"\* \* \* To the extent that the claim has been expanded on appeal from the claim as handled with the highest operating officer charged with handling such disputes, it is invalid as being an improper variance from the issues made up on the property. This leaves within the scope of the appeal the right of the Carrier to contract the blasting out and removing of 80,000 cubic yards of rock and the preparation of the sub-grade for the new track. The claim as filed is broad enough to include this issue and to this extent is not a variance from the issues handled on the property."

Here too, the claim filed on behalf of "all train dispatchers adversely affected" is broad enough to include C. R. Trammel, the train dispatcher originally named, and to that extent does not constitute a variance from the issues handled on the property.

Article 3 consists of four sections designated as (a), (b), (c) and (d).

Section (a) simply provides that each regularly assigned train dispatcher is "entitled and required to take two regularly assigned days off per week as rest days, except when the requirements of the service make it impracticable to relieve him." As originally adopted before the shorter work week it, of course, provided for one rest day per week.

Section (b), entitled "Relief Services", provides that "where **relief requirements** regularly necessitate four or more days relief service per week for a relief dispatcher", regular relief assignments shall be established on the basis of one relief assignment where the total regular relief days are at least four and not more than eight; two relief assignments where the total regular relief days are at least nine and not more than thirteen, etc.

Section (d), entitled "Extra Relief Service", provides that "**relief requirements** of less than four days per week, or **relief requirements** in excess of those included in assignments of regular relief dispatchers, shall be considered extra work and shall be performed by extra dispatchers \* \* \*".

Section (c) is entitled "Relief Requirements", and reads as follows:

"Each train dispatcher's position shall be considered a 'relief requirement' as referred to herein".

That section is the same as it was prior to September 1, 1949, when the above mentioned change in Section (a) became effective.

The Organization contends that the effect of Section (c) was to constitute all regularly assigned train dispatcher jobs as seven day positions, thus making originally a "relief requirement" of one day for each train dispatcher's position, and eventually two days in view of the shortened work week.

The Carrier disputes that interpretation but suggests no alternative. It argues, however, that in the clause in Section (b) "where relief requirements regularly necessitate", the words "regularly necessitate" refer merely to the needs of the service; and that where there is no work to be done on the regularly assigned dispatcher's rest day, no relief dispatcher is required. It points out also that the blanking of these positions covered the period from 10:45 P. M. on Saturdays to 2:45 P. M. on Sundays, that from 10:45 P. M. on Saturdays to 8:00 A. M. on Sundays the train dispatcher's office was closed, and that on the remainder of the period (Sundays, 8:00 A. M. to 2:45 P. M.) the chief train dispatcher did only his own duties during the blanked out first shift.

But in construing an Agreement we must give effect, if possible, to all its provisions. As noted above, the title of Section (c) is "Relief Requirements" and its sole provision is that "each train dispatcher's position shall be considered a 'relief requirement' as referred to herein".

The only references we have found in the contract to relief requirements are "where **relief requirements** regularly necessitate (Rule 3, Section (b))", and "**relief requirements** of less than four days per week, or such **relief requirements** in excess of those included in assignments of regular relief dispatchers". (Rule 3, Section (d)). Obviously, therefore, the purpose of Section (c) was to explain the term as therein used. It can mean only that for the purpose of relief assignments under Sections (b) and (d) of Rule 3, each train dispatcher's position is considered a "relief requirement", without regard to other circumstances, since no exceptions or qualifications

are stated. In short, "relief requirements" depend solely upon the number of train dispatchers' positions, and not upon the needs of the service.

The Carrier argues that it is ridiculous to say that the parties agreed to make all train dispatchers' work seven day positions without reference to the needs of the service. The answer may be that when adopted the rule represented the needs of the service; or that for some other reason it was agreed to—perhaps in a compromise. But as noted above, no alternative meaning has been suggested, and after an intensive study of the rules we have been unable to conceive of one. Consequently we must conclude that in blanking the two positions on rest days and thus depriving Claimant of the two weekly relief assignments the Carrier violated the Agreement. The claim on his behalf as handled on the property must be allowed, and Claimant compensated for the resultant loss.

**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 action of the Carrier in blanking the two positions was in violation of the Agreement.

#### AWARD

Claim allowed on behalf of Claimant Trammel as handled on the property, in accordance with the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1959.