

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway that:

1. Carrier violates the Agreement between the parties when it abolished the regularly assigned rest day relief position on the second shift dispatcher's position on the Bristol District, Radford Division, Roanoke, Virginia, on Sundays and combined the work of this position with that of the second shift dispatcher's position on the River District, Radford Division.

2. Commencing on September 21, 1955 and continuing thereafter until corrected on each day of the violation Carrier shall:

(a) Compensate the senior idle extra dispatcher entitled to the work for eight (8) hours at the straight time rate of position upon which work was denied; or

(b) If no extra train dispatcher under the Agreement is available to perform train dispatching service on any day the violation occurs, then the regular occupancy of the position, eight (8) hours at the time and one-half rate.

(c) Any other employe under the Agreement, extra in preference, who was denied employment because of Carrier's violative act.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

The Dispatchers' Office on the Radford Division of the Carrier is located at Roanoke, Virginia. To perform the train dispatching duties on this division there are six basic positions providing continuous service:

First Shift, River District, 8:00 A. M. to 4:00 P. M.

Second Shift, River District, 4:00 P. M. to 12 Midnight

Third Shift, River District, 12 Midnight to 8:00 A. M.

"In other words Carrer may, in accordance with its operational requirements, stagger the work week assignments of employes regularly assigned to six day service so the rest days of some will coincide with the work days of others and thus make it possible for the regular employe to do all the work necessary to have performed on those days without the necessity of any relief." (Emphasis ours).

In connection with the Carrier's position that there is no requirement under the Forty Hour Week Agreement rules that rest days of each individual position must be filled, attention is also invited to Third Division Awards 5545, 5547, 6232, 6602, 6947, 6948, 7073 and 7189.

The specific question of a Carrier using one dispatcher to cover two districts to perform all dispatcher work from 8:00 A.M. on Saturdays to 11:59 P.M. on Sundays during which time the work was light, and using two dispatchers to cover the two districts at other times, was before your Board in Docket No. TD-6592. The Third Division in Award 6839 thereon cited their Awards 6184 and 6602, referred to by the Carrier in the instant case, and stated:

" * * * We see no necessity for two sets of train dispatchers to perform the necessary service from 8:00 A.M. Saturday to 11:59 P.M. Sundays, during which period the volume of train service has been greatly reduced."

See also Third Division Award 7211 similarly holding.

The Carrier asserts that as the dispatchers involved in the instant case are of the same class, perform the same type of work, receive the same rate of pay and are carried on the same seniority roster, it was proper under the Forty Hour Week rules it cites, as interpreted by your Board, to assign the dispatchers on a staggered basis to cover the seven-day operation. The Carrier further asserts that the abolishment of an assigned relief position which had relieved the second shift Radford to Bristol District dispatcher on Sundays and the use of one dispatcher during the period involved in the claim to perform all dispatcher work on the second trick on Sundays was not a violation of the Agreement as alleged by the Employees.

It is the position of the Carrier the Employees' claim is not supported by any schedule rule, therefore, denial of the claim is respectfully requested.

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier's Radford Division extends westward from Roanoke, Va. to Bluefield, W. Va., a distance of 101 miles, and from Walton, Va. to Bristol, Va., a distance of 111 miles. Walton is 40 miles west of Roanoke. Radford Division dispatchers are located at Roanoke, the headquarters of the Division.

Prior to Saturday, May 29, 1954 the Carrier had two dispatcher positions assigned on the first trick 8:01 A.M. to 4:01 P.M.; two on the second trick 4:01 P.M. to 12:01 A.M., and two on the third trick 12:01 A.M. to 8:01 A.M., seven days per week. One dispatcher on each trick worked the district Radford, Va. to Bristol, Va., a distance of 108 miles, Radford being 3 miles from Walton on the line to Bristol. The other dispatcher on each trick worked the district Roanoke to Bluefield plus the 3-mile territory Walton to Radford, therefore, the Roanoke to Bluefield dispatcher territory covered 104 miles of railroad.

Effective May 29, 1954, the Carrier had one dispatcher work both districts on each of the three tricks on Saturdays and Sundays. The reduction in the number of dispatchers on duty on Saturdays and Sundays was made because of reduced train movement over both territories on such days, and because track motor cars and other maintenance of way equipment which, when used results in extra work for dispatchers, were not normally operated due to Saturday and Sunday being rest days for maintenance of way employees. One dispatcher on each trick on Saturdays and Sundays was all that was needed to perform 11 dispatcher work required. The rearrangement of the dispatcher force effective May 29, 1954 to meet the service requirements resulted in the three Radford to Bristol district dispatchers being assigned to work Monday through Friday with rest days Saturday and Sunday. The remainder of the dispatcher force, which covered both districts on Saturdays and Sundays, but covered only the Roanoke to Bluefield district on other days, was assigned to work as follows:

First trick—Monday through Friday, with rest days Saturday and Sunday

Second trick—Wednesday through Sunday, with rest days Monday and Tuesday

Third trick—Saturday through Wednesday, with rest days Thursday and Friday,

and regularly assigned relief dispatchers filled the assignments on the rest days.

The rearrangement of the dispatcher force on May 29, 1954 resulted in the abolishment of a regularly assigned relief dispatcher position, the incumbent of which formerly filled the second trick position of the Radford to Bristol district dispatcher on Sundays.

Commencing with July 16, 1955, account of increased train movement, the second dispatcher was needed and was used on each of the three tricks on Saturdays, and on the first and third tricks on Sundays, and this resulted in the assignment of an additional relief dispatcher. After July 16, 1955, and through December 4, 1955, one dispatcher continued to do all the dispatching work on the second trick on Sundays. Starting with December 11, 1955 a second dispatcher was needed and was used on the second trick on Sundays.

All train dispatchers on the Carrier's Radford Division are of the same class, perform the same type of work, receive the same rate of pay and are carried on the same seniority roster.

It is the position of the Organization that the Carrier had no right under the Agreement to abolish, or not fill, a position on one or both of the rest days and combine the work with that of another position.

Organization claims that the work on the Bristol position had not disappeared nor had it diminished sufficiently to warrant abolishment. That, the position still existed with all its work intact and must be relieved as required by the Rules of the Agreement.

In the Agreement effective September 1, 1949, establishing the Forty Hour Week, the following Rules thereof are pertinent to the question involved:

"(a) The expressions 'positions' and 'work' used in this Article No. 2 refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

(b) There shall be established, effective September 1, 1949, for all employes, subject to the exceptions contained in this Article No. 2, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday."

* * * * *

(4)—Regular Relief Assignments—

All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement.

Regularly assigned occupants of regular relief assignments shall be paid the rates applicable to positions on which relief service is performed.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employes of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employe or employes whom they are relieving."

* * * * *

"(a) Eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day's work, except that where two or more shifts are worked, eight (8) consecutive hours with no allowance for meals shall constitute a day's work."

Organization contends that the Carrier should have included the rest days in a regular relief assignment or have the work otherwise performed by extra employes.

Carrier contends that the right to stagger work, as in the instant case, to meet its operational requirements was of equal importance with the establishment of the forty hour work week itself.

The determination of the number of employes needed to perform its work is the function of Management except as it has limited itself by Agreement. Relief assignments are only required to be made when there is work necessary to be done. When all work can be effectively performed by staggering of regularly assigned employes the necessity for relief assignments on rest days does not exist. In other words, we hold Carrier may, in accordance with its operational requirements, stagger the work week assignments so that the rest days of some will coincide with the work days of others and combine the work done, as was done in this case, and thus make it possible for the regular employe to do all the work necessary to have performed on those days without the necessity of any relief, particularly, where as here, the employes were of the same class, performed the same type of work, receive the same pay and are carried on the same seniority roster. Awards 5545, 8136.

Following the effective date of the Forty Hour Week Agreement in September, 1949, numerous disputes have arisen in respect of various aspects of its application. In the ensuing years, a substantial number of awards have been issued by this Board dealing with the application of said Agreement.

It is unnecessary to review all of them in detail herein inasmuch as the two points of view of the general issue raised in this case have been fully considered and discussed in Awards 6688 and 6946. The Employees rely on the former and the Carrier on the latter and on later Awards.

We have again thoroughly reviewed these Awards which are clearly in disagreement on the essential points involved, and are again persuaded that the logic of the reasoning in our Award 6946 should be adhered to in this case.

On the basis of the instant record we conclude that for the reasons well stated in Award 6946 that the Agreement was not violated. Awards 6839, 6946, 6974, 7317, 8136, 9119 and 9575.

Carrier has objected to the claim on the ground that it is filed for unnamed employees. Inasmuch as we are deciding this claim on the merits, we deem it unnecessary to make any determination of this point.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May, 1962.

DISSENT TO AWARDS 10622 AND 10623, DOCKETS TE-9163 AND 9164

Assuming without conceding that all of the so-called 40-hour week provisions of the somewhat obscure agreement involved in these two dockets actually apply to train dispatchers these awards merely compound earlier errors.

These errors arise mainly from the misconceptions that the right to stagger work weeks was something new which was given to the carriers along with the obligation to grant a shorter work week, and that staggered work weeks somehow permit the combining of the work of separate and distinct positions in order to avoid one of the main purposes of the shorter work week: The spreading and maintaining of employment.

For these reasons and those more fully set out in my dissents to Awards 9119, 9574 and 9575, I cannot agree with the present awards and must, therefore, dissent.

LABOR MEMBER

J. W. Whitehouse