

Award No. 11778
Docket No. TD-13972

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

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

(a) The Chesapeake and Ohio Railroad Company, hereinafter referred to as "the Carrier", violated and continues to violate Rule 3(g), "Rest Days and Relief Service", when it abolished the third trick train dispatcher positions at St. Albans, West Virginia, and Peach Creek, West Virginia, commencing 11:00 P. M. to 7:00 A. M., Sunday, November 11, 1962, and continuing to blank said third trick train dispatching position each Sunday subsequent to November 11, 1962, for rest day relief purposes.

(b) The Carrier shall now compensate the two senior available extra train dispatchers, and in the absence of the two senior extra train dispatchers, compensate the senior available train dispatcher in the St. Albans and Peach Creek train dispatching office, one day's pay at pro rata train dispatchers' daily rate, for each Sunday, Commencing November 11, 1962, and subsequent to November 11, 1962, until said violation has ceased.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, effective August 16, 1948, (since amended in respect to certain rules). The said Agreement is on file with your Honorable Board and by this reference is incorporated into this Submission as though fully set out herein.

Rule 3(g), upon which the instant claim is predicated, provides that:

"The combining of territory, duties or responsibilities, or the blanking of positions to avoid using relief or extra dispatchers to provide relief on rest days for established positions will not be permitted, except by agreement between the parties hereto."

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In this case the Third Division found there was definite combining of territories for relief purposes, which is entirely lacking in the instant case, as no combining of any nature has occurred, there being no work to be performed on the third trick at St. Albans and Peach Creek on Sundays.

In summation, the Carrier says that none of these awards require the Carrier to employ dispatchers where there is no dispatcher work to perform. On the contrary, these awards have pointed that premise out as a clear and fundamental doctrine to be followed where there has been no agreed upon rule to the contrary. The Board should find in the instant case that there is no rule contrary to the generally annunciated doctrine.

CONCLUSIONS

The Carrier has shown that:

1. No relief dispatcher is required on Sunday nights at St. Albans and Peach Creek because there is no work to be performed on that trick.
2. As there is no work to perform on the third trick at St. Albans and Peach Creek, there can plainly be no combining of work at those points with other dispatcher work on the Huntington Division.
3. There has been no combining of work in prohibited manner because the Employees have not cited any work which they contend has been combined.
4. When any emergency or extraordinary condition has made dispatcher work necessary on the third trick on Sunday at the two points, dispatchers have been used to perform such work in independent manner, there being no attempt to combine such emergency or extraordinary work with that of the Huntington Division main line dispatcher.
5. The claim should, therefore, be declined in its entirety.

All data included in this submission has been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to the time the instant claim arose, and since then, Carrier has maintained train dispatching offices at St. Albans and Peach Creek, West Virginia, both of which points are within the Huntington Division Seniority District. Prior to November 11, 1962, at each of these stations, three trick train dispatchers positions were maintained weekly providing continuous around-the-clock train dispatcher service — twenty-one tricks in all. These twenty-one tricks were maintained by a regularly assigned first trick dispatcher, a regularly assigned second trick dispatcher, a regularly assigned third trick dispatcher and a swing or regularly assigned relief dispatcher each of whom was entitled to and required to take two (2) regularly assigned days off per week as rest days; the remaining requirement of one trick was performed by an extra dispatcher. Effective November 7, 1962, the

Carrier, unilaterally, changed the assigned hours and rest days of the first trick, second trick, third trick and swing dispatchers and notified them that the Train Dispatcher's office at St. Albans and the one at Peach Creek would be closed thenceforth from 11:00 P. M. Sunday to 7:00 A. M. Monday and that no extra dispatcher would be assigned during those hours, reducing the number of tricks to which dispatchers were assigned to twenty (20) tricks a week, and thus eliminated the relief assignment of the extra dispatcher on the third trick position at both St. Albans and Peach Creek.

Claimant contends that at St. Albans and Peach Creek the train dispatchers' positions are seven-day positions to be provided with two days relief by regular relief or extra dispatchers; that the Carrier removed the rest day relief service from the third trick dispatchers position both at St. Albans and Peach Creek by blanking the position of the third trick train dispatcher from 11:00 P. M. Sunday to 7:00 A. M. Monday; Claimant contends this was in violation of the effective Agreement and asks that Carrier compensate the two available extra train dispatchers until the violation has ceased or an agreement with the Organization has been reached in accordance with the Agreement.

It is the contention of the Carrier on the other hand that there had been no combining of territories, duties or responsibilities, no blanking of a position; Carrier urges that in each instance the dispatching had been closed because there was no longer any work to perform; that there had been no blanking of positions to avoid using relief or regular train dispatchers; there was no dispatcher work to be done during the period these offices are closed, hence no relief was necessary.

It is most appropriate at this point to set forth the rules of the Agreement pertinent to this dispute.

Rule 3(a) (as revised 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. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week.

"Rule 3(d):

The railway will designate an established rest day for each position in accordance with the foregoing section. Five days' notice will be given of change in assignment of rest day.

(NOTE: The reference to the 'foregoing section' is to Rule 3(c) which defines the term 'rest day' and the duration thereof. That rule is not at issue here)

* * * * *

"Rule 3(e):

Where relief requirements regularly necessitate four (4) or more days' relief service per week, relief train dispatchers shall be

employed, regularly assigned, and compensated at rate applicable to positions worked. When not engaged in dispatching service they will be assigned to other service as directed by proper authority and shall be paid for such service not less than the rate applicable to trick train dispatchers. It is understood that relief dispatchers may be used in lieu of extra dispatchers to perform extra train dispatcher service on days that will not interfere with their regular relief assignment. Relief requirements of less than four days per week will be performed by extra dispatchers who will be paid the daily rate of each train dispatcher relieved."

* * * * *

"Rule 3(g):

The combining of territory, duties or responsibilities, or the blanking of positions to avoid using relief or extra dispatchers to provide relief on rest days for established positions will not be permitted, except by agreement between the parties hereto."

It has been established by a continuity of Awards of this Division that the determination of the number of employees needed to perform its work is the function of Management **except as it has limited itself by Agreement**. The problem before us presently, then, is to determine whether or not, in the present situation, Management has limited itself by the Agreement. In construing an Agreement we must, if possible, give effect to all of its provisions.

The Organization contends that the effect of the provisions of the Agreement, hereinbefore set out, is to constitute all regularly assigned train dispatchers as seven-day positions thus making a relief requirement of two days for each train dispatcher's position. Carrier, to the contrary, insists that no such interpretation is logically possible and that where there is no work to be done, on the regularly assigned dispatchers' rest day, no relief dispatcher is required and there is, consequently, no blanking of a position.

It will be observed that Rule 3(a) of the Agreement provides that **each regularly assigned train dispatcher will be required to take two regular days off per week as rest days**; furthermore in Rule 3(e) of the Agreement we note the following expression—"where relief requirements regularly necessitate four (4) or more days relief service per week". This would indicate that for the purpose of relief assignments each train dispatcher's position is considered as containing a relief requirement without regard to any other considerations including needs for the service. Relief requirements depend solely upon the number of train dispatchers positions. We must, therefore, conclude that Carrier in unilaterally blanking the position of the regularly assigned third trick dispatcher on a rest day and thus depriving Claimant of a relief assignment without first negotiating with the Organization as provided for in 3(g) of the Agreement has violated the Agreement. The situation presented here is very similar to that presented in Award 8910 (Johnson) in which the same conclusion was reached. See also Award 5898 — Daugherty.

Carrier shall compensate Claimant in accordance with (b) of the Statement of Claim until the violation is corrected.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employee 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 has been violated.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1963.