Award No. 12115
Docket No. TD-13721

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

> (a) The Pennsylvania Railroad Company (herein referred to as "the Carrier"), violated the currently effective Schedule Agreement between the parties, specifically Regulations 4-C-1 (b) and 4-F-1 (b), when it failed to properly compensate Movement Director G. J. Bigelow for services performed while appearing as a witness on behalf of the Carrier at hearing held on June 28, 1961.
>
> (b) The Carrier shall now be required to compensate Claimant Bigelow for services referred to in paragraph (a) of this Statement of Claim in accordance with the provisions of Regulation 4-F-1 (b).

EMPLOYES' STATEMENT OF FACTS: An Agreement is in effect between the parties, revised effective as of June 1, 1960, and a copy thereof is on file with this Board. Said Agreement is by this reference incorporated into this Ex Parte Submission as though fully set out herein.

The regulations (rules) of Part II of the Agreement, applicable to Movement Directors, or the material provisions thereof, which are essential to the Board's consideration of this dispute are here cited and quoted for ready reference:

Regulation 4-C-1:

> "(a) Each regularly assigned Movement Director will be entitled and required to take two (2) regularly assigned rest days per work week, 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 Movement Director in excess of five (5) days per work week. A regularly assigned Movement Director required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days."

* * * * *

CONCLUSION

The Carrier has shown that the applicable Rules Agreement does not support the claim and that the Employes have not and cannot produce valid evidence to the contrary.

Therefore, the Carrier respectfully submits your Honorable Board should deny the claim of the Employes in this dispute.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic issue in this case is whether the Carrier violated the Agreement by paying the Claimant under 4-F-1 (c) rather than under Rule 4-F-1 (b) as the Organization contends:

Before proceeding to the merits of the case there are two procedural matters to be disposed of. The Carrier contends that the claim before this Board is not the same claim progressed on the property and therefore should be dismissed. The Organization contends that the rest day provision of the Agreement shows that the Carrier never relied on its present position on the property. It is the position of this Referee that an analysis of the agreed upon Statement of Facts between the parties refutes both arguments.

The applicable provisions of the Agreement are:

> "4-F-1 (c). For attending court, inquest, investigation or hearing by direction of the Management outside of his regular working hours on a day he performs work on a position covered by this Agreement, an employe shall be compensated for the actual time spent in attending the court, inquest, investigation or hearing outside the regular working hours of the position at the straight time rate of the position.
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> * * * * *
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> 4-F-1 (b). A regular Train Dispatcher, or an extra Train Dispatcher occupying a temporary position or vacancy under the provisions of Regulation 2-B-1 (a), required by the Management to attend court, inquest, investigation or hearing on either or both of the rest days assigned to his position will be allowed eight (8) hours at the pro rata rate of his position.
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> * * * * *
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> 4-C-1 (b). The term 'rest days' as used in this Regulation (4-C-1) means that for a regularly assigned Train Dispatcher seventy-two (72) hours, and for a relief Train Dispatcher (who performs five (5) consecutive days' service as Train Dispatcher) fifty-six (56) hours, shall elapse between the time required to report on the day preceding the 'rest days' and the time required to report on the day following the 'rest days', except that when non-consecutive rest days are assigned in accordance with paragraph (a) of this Regulation (4-C-1), the number of hours specified herein shall be reduced by twenty-four (24). These definitions of the term 'rest days' will not apply in case of transfers account Train Dispatchers exercising seniority."

While admittedly Regulation 4-C-1 (b) is poorly drafted, this Division and others have held that a "day" is a 24 hour period. It must therefore be held that the Claimant in this case was not required to attend an investigation on his rest days and therefore Regulation 4-F-1 (b) is not applicable.

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

That the parties waived oral hearing;

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

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 January 1964.

LABOR MEMBER'S DISSENT TO AWARD 12115
DOCKET TD-13721

The holding of the majority is palpably erroneous.

First: This Labor Member is in disagreement that Regulation 4-C-1 (b) is "poorly drafted". To the contrary, it is a nationally negotiated rule. The fact that its terms are clear and unambiguous is best evidenced by the fact that during all the years it has been in effect on carriers generally throughout the country, its meaning and intended application has been, and now is, clearly understood.

Second: The Award here dissented to is in error in premising the holding on the basis that a day is a "24-hour period", apparently relying upon Award 9839 which the carrier here urged as applicable. The words "any day" in train dispatcher agreements only has reference to the overtime rule. Here we have the term "rest day" and it is very specifically defined.

Finally — As the records of this Division will disclose, the carrier herein has evidenced its understanding of the intended application of the rule, in that after proceedings had been instituted before this Board, the parties agreed upon disposition — the carrier paid the claim.

The only difference between the claim in reference and that here involved is that in the case here involved the rest day service was at the beginning of the 72 hour period specified, whereas in the other, such service was at the close of the period.

For the above reasons, I dissent.

H. C. Kohler