



Award No. 15479
Docket No. TD-15795

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC RAILROAD COMPANY

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

(a) The Missouri Pacific Railroad Company (hereinafter referred to as "the Carrier") violated the effective agreement between the parties, Article 3(a) thereof in particular, by failing to properly compensate Train Dispatcher J. K. Hobbs, at time and one-half rate for service performed for the sixth and seventh days consecutive on January 24 and 25, 1965; and likewise failed to properly compensate Train Dispatcher E. McLean at the time and one-half rate for the sixth and seventh days' consecutive service performed on January 26 and 27, 1965.

(b) The Carrier shall now be required to compensate each of the individual claimants herein the difference between pro rata rate of their respective assignments and the time and one-half rate provided for by Article 3(a) of the effective agreement.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board and the same is made a part of this submission as though fully set out herein.

For the Board's ready reference Article 3(a), in pertinent part, and Article 3(e) are here quoted:

"ARTICLE 3.

(a) Rest Days.

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. The Carrier may assign nonconsecutive rest days only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week. Any regularly assigned train dispatcher 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.

'When the needs of the service require a change in rest day or days of a position, seventy-two (72) hours' notice will be given all concerned, including the Office Chairman, by posting the notice in the Dispatching Office, where such positions are located.'

As we understand the matter, under date of January 17, 1965, the notice required by the above-quoted rule was posted changing the rest days of Dispatcher Hobbs' position from Sunday and Monday to Tuesday and Wednesday, effective January 23, 1965. Thereafter, the old rest days, i.e., January 24 and 25 became work days of Dispatcher Hobbs' position, and January 26 and 27 became rest days.

Article 3(a), relied upon by you, affords no support for the instant claim because the claimant did have off the two rest days assigned to his position, which is in accordance with all-time practice under the provisions of the Dispatchers' Agreement.

In view of the foregoing, there is no basis for your claim for additional compensation in behalf of Dispatcher Hobbs which is hereby respectfully declined.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: Claimant Hobbs worked second trick with rest days of Sunday and Monday. Claimant McLean worked third trick with rest days of Tuesday and Wednesday. January 17, 1965, the Carrier issued a notice changing Hobbs' rest days from Sunday and Monday to Tuesday and Wednesday, and McLean's rest days from Tuesday and Wednesday to Thursday and Friday.

The change was to become effective January 23, 1965. As a result of the change, both Claimants were required to perform seven consecutive days' service, and were compensated at the pro rata rate on the sixth and seventh days.

The Organization cites Article 3 (e) as follows:

"When the needs of the service require a change in rest day or days of a position seventy-two (72) hours' notice will be given all concerned, including the Office Chairman, by posting the notice in the Dispatching Office where such positions are located."

The time limit required in the rule was effective and is not challenged. The Organization does contend, however, that the Carrier failed to establish "the needs of the service require a change" when it arbitrarily changed the rest days of the positions involved.

The Carrier asserts that Rule 3 (e) is discretionary in regard to the needs of the service and within the sole province of the Carrier. They further allege that since the change of rest days was effective on January 23, 1965, the employees did not perform service on the rest days of their position.

We hold that the Carrier is not obligated under Rule 3 (e) to sustain a burden of proving "the needs of the service", but that a presumption exists that the Carrier acts in good faith when it changes the rest days. We would require that an abuse of discretion be shown in order to overcome this burden.

We further hold that the notice was given in accordance with the rule and, therefore, on the days in question the Claimants were not working on "the assigned rest days of their position." Therefore, the claims will be denied.

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 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 7th day of April 1967.