



Award No. 18085
Docket No. TE-18470

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
NORFOLK AND WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk & Western Railway Company, that:

Carrier violated the Agreement with the employees represented by the Transportation-Communication Employees Union when it failed to work Extra Dispatcher G. O. Reed on an assigned rest day, July 16, 1968, as dispatcher on Relief No. 3, third shift Whitethorne dispatcher, Radford Division, due to no extra relief dispatcher available.

Carrier shall now be required to compensate Extra Dispatcher G. O. Reed for eight (8) hours at the prevailing time and one-half rate of pay for the position of third shift train dispatcher on the date of July 16, 1968, account not used to perform the aforesaid dispatchers' work in compliance with the Agreement.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

There is a collective bargaining agreement between the parties hereto, effective date of February 16, 1958, as amended and supplemented, and by this reference is made a part hereof. The claim was handled on the property in the usual manner, including conference, up to and including the highest officer of the Carrier designated to handle claims and grievances, and disallowed. Conference was held February 6, 1969.

The claim arose because Carrier refused to permit claimant to work the train dispatcher's vacancy on the second rest day of his work week, after he had worked a total of six consecutive days on the vacancy, five work days and one rest day.

Carrier claimed G. O. Reed, claimant, was not entitled to the vacancy because he did not fill C. W. Stultz's position on a hold-down basis for a period of five working days.

Employees filed claim as follows:

"Carrier violated the Agreement with the employees represented by the Transportation-Communication Employees Union when it failed to work Extra Dispatcher G. O. Reed on an assigned rest day, July 16, 1968, as dispatcher on Relief No. 3, third shift White-thorne dispatcher, Radford Division, due to no extra relief dispatcher available.

Carrier shall now be required to compensate Extra Dispatcher G. O. Reed for eight (8) hours at the prevailing time and one-half rate of pay for the position of third shift train dispatcher on the date of July 16, 1968, account not used to perform the aforesaid dispatchers' work in compliance with the Agreement."

Rules 5 (j) and 9, Section 1 (d) (7), Telegraphers' Agreement, were cited as support for the claim.

Carrier declined the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant G. O. Reed worked as an extra train dispatcher on five consecutive days, July 10 to 14, 1968, filling a vacancy due to absence of the regular incumbent. He also worked the same position on the sixth consecutive day, July 15, 1968, one of the rest days, due to unavailability of any other extra dispatcher.

On the second rest day, July 16, the same situation prevailed. However, the regular incumbent of the position was permitted to work that day. Claimant contended that since he worked the position all five work days he was entitled to both of the rest days and any rights attached to them.

Carrier contends that since claimant was not assigned to a "hold-down" for the entire five days, but was assigned on a day to day basis, he did not acquire any rights with respect to the rest days of the position.

The pertinent part of Rule 5 (j) reads as follows:

"When necessary to fill vacancy of a regular train dispatcher with an extra train dispatcher, the senior available extra train dispatcher, if competent, will be used and will hold the vacancy for five working days, after which the vacancy will be given to a senior available extra train dispatcher desiring same. Extra train dispatchers used to fill train dispatcher vacancies of five working days or more will assume the rest days of the position being relieved. In event the extra dispatcher is released at the end of the work week of the position he is relieving, he will not be permitted to move to another train dispatcher vacancy nor return to his regular assignment until after the two following rest days of the position from which released."

The language of this rule does not support the Carrier's argument. The rule makes no distinction between an assignment made on a day to day basis and one made for a more extended time. It merely provides that an

extra dispatcher will hold the vacancy for five working days, taking the rest days of the assignment. Since claimant did work the five days as contemplated by the rule, he assumed the rest days of the position and any rights attached thereto.

It is settled that under rest day rules like we have here, the relieving employee who has earned the rest days has a right to any work on those days superior to the returning regular employee. Awards 14698, 15442, and Awards 26 and 39 of P. L. Board No. 132. Accordingly, Claimant Reed should have been permitted to work the position on July 16, and his claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1970.