



Award No. 18411

Docket No. TD-18620

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter "the Carrier") violated the effective Agreement between the parties, Article III (a), Article IV (k) 1 and Article IV (l) 2 thereof in particular, by its failure and declination to compensate Train Dispatcher L. O. Williams at time and one-half rate for service performed on December 5, 1968.

(b) Carrier shall now additionally compensate Claimant Williams for the difference between pro rata rate and time and one-half rate applicable to Position No. 40 for rest day service performed on December 5, 1968.

EMPLOYEES' 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 incorporated into this Ex Parte Submission as though fully set out herein.

For the Board's ready reference Article III (a), Article IV (k) 1 and Article IV (l) 2 of said Agreement are here quoted in full:

"ARTICLE III

Rest Days, Vacation and Relief Service

(a) Rest Days

1. Each regularly assigned train dispatcher will be entitled and required to take two 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 days per week. Any regularly assigned train dispatcher, who is 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.

and was relieved from performing service on Trick Train Dispatcher Assignment 35 on Sunday, December 8, 1968 on account of having performed compensated service as a train dispatcher on five days in his work week beginning Monday, December 2, 1968.

The Organization requests in Claim 1 that the claimant be allowed time and one-half rate less straight time rate allowed for services rendered by him on December 5, 1968 and in Claim 2 that he be allowed a day's pay at pro rata rate on Sunday, December 8, 1968 to compensate him for an alleged loss of time on Assignment No. 35 that date.

OPINION OF BOARD: Claimant was assigned to a temporary vacancy on Position No. 35 with hours from 11:30 P. M. to 7:30 A. M. and with Wednesday and Thursday as rest days. The assignment became effective Monday, December 2, 1968 to continue through Sunday, December 15, 1968. Claimant was a Guaranteed Assigned Dispatcher while working that vacancy. Because the regular incumbent was absent on December 5, 1968, and because no extra dispatchers were available, Carrier assigned the Claimant to work Position No. 40 on Thursday, December 5, 1968 — his rest day — for which he was paid at the pro rata rate. Carrier relieved the Claimant from working on Sunday, December 8, 1968.

A number of Rules are relevant. Article IV (k) (1) provides that positions finally made vacant by rearrangement of the work force "will then be assigned to the senior qualified extra train dispatcher on the seniority district." Claimant was so assigned to Position No. 35. Paragraph (1) (1) of the same rule provides that a "train dispatcher moving from one assignment to another * * * will automatically assume the conditions, including rest days, of the assignment to which he moves." Claimant assumed Wednesdays and Thursdays as his rest days on Position No. 35.

Claimant worked Position No. 35 on Monday, Tuesday, Friday and Saturday, December 2, 3, 6 and 7, 1968 and he worked Position No. 40 on Thursday, December 5, 1968. His scheduled work assignment on Sunday, December 8, 1968 was either blanked or worked by another employee. At any rate Claimant was not permitted to work that day.

Carrier argues that because Claimant was a Guaranteed Assigned Dispatcher while working on Position No. 35 he had no fixed rest days. He was only guaranteed five (5) days of work Monday through Sunday.

The Memorandum of Agreement dated September 25, 1965 contains several significant provisions. Paragraph (1) says that Guaranteed Assigned Dispatcher positions are "to be bulletined and assigned in accordance with the provisions of Article IV (j) of the effective schedule agreement, except as to assigned hours, rest days and territory * * *". Paragraph (2) reads as follows:

"(2) Guaranteed Assigned Dispatchers will be paid under the applicable Agreement provisions, with a minimum of five (5) days for each work week, Monday through Sunday, in which fully available, and rest days need not be consecutive." (Emphasis ours.)

And paragraph (4) thereof says: "Incumbents of Guaranteed Dispatcher positions will be used on the same basis as extra train dispatchers * * *."

The September 25, 1965 Memorandum of Agreement does not automatically replace all of the schedule agreement rules with respect to the rights of

Guaranteed Assigned Dispatchers. It does not, for example, vitiate or replace paragraph (1) (1) of Article IV. Paragraph (2) of the Agreement merely says that the rest days for such employees "need not be consecutive." If the Carrier wanted to make the rest days for Position No. 35 Wednesday and Friday or any other two non-consecutive days he could have done so. But the position bulletined, as required in paragraph (1), apparently listed the rest days as Wednesday and Thursday. This being the case, Claimant automatically assumed those as his rest days under paragraph (1) of Article IV and the Carrier had no right to consider Thursday, December 5, 1968 a non-rest day. Under Article III (a) Claimant was entitled to pay at the rate of time and one-half for services performed on his rest day, Thursday, December 5, 1968.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schultz
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1971.