

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19845
Docket Number TD-19889

John H. **Dorsey**, Referee

(American Train Dispatchers Association)

PARTIES TO DISPUTE: (

(The Soo Line Railroad Company

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

- (a) The Soo Line Railroad Company (hereinafter referred to as "the Carrier"), violated the Agreement in effect between the parties, Rule 4 (a) thereof in particular, when it refused to compensate Claimant Night Chief Dispatcher P. M. **McNamara** eight (8) **hours** at rate of time and one-half of the then applicable rate of Chief Dispatcher's position for November 2, 1970 which **was service** on assigned rest day.
- (b) Because of said violation, the Carrier shall now compensate the individual Claimant for amount of the difference between the **pro-rata** rate and time and one-half rate of Chief Dispatcher's position for eight (8) hours on November 2, 1970 to which he is entitled under the terms of the Agreement.

OPINION OF BOARD: Claimant held the position of Night Chief Train Dispatcher. a position covered by Agreement between the parties, dated **this** first day of March, 1961. herein called Agreement. His assigned hours in that position were 11:00 P.M. to 7:00 A.M. His regularly **assigned** work week was Tuesday through Saturday with rest days Sunday and Monday.

Claimant worked his regularly assigned position on Tuesday, October 27, 1970. through Saturday, October 31, 1970. By completing that performance of service he earned **as** rest days Sunday, November 1, 1970 and Monday November 2, 1970. **Under** Rule 4 (a) of the Agreement. Claimant was contractually entitled to a rate of time and one-half should he be required to perform service on either of his rest days, with certain **exceptions** not shown to exist on the claim date.

On Monday, November 2, 1970. Claimant was assigned to work vacation relief on the Chief Train Dispatcher's position for the period from that date through and inclusive of November 7, 1970. The Chief Train Dispatcher's position is not within the scope of the Agreement. For the work Claimant performed on the Chief Train Dispatcher's position he was paid the pro rata rate of that position. The claim before us is that he should have been paid time and one-half for working on his rest day, November 2, 1970. **What** he was paid for services performed **on** any other date of the assignment is not at issue before us.

In the handling of the case on the property the record shows that:
(1) Petitioner filed claim, in behalf of Claimant for "time and one-half for **services** performed on" November 2, 1970, which was one of Claimant's earned

rest days - - Petitioner cited Rule 4 (a) of the Agreement in support of its position; (2) on **November 17**, 1970, the Superintendent denied the claim, his reasons being given in one sentence: "I must continue to **deny** payment of this claim on the basis of Paragraph C - Rule 3 of the Train Dispatchers' Agreement;" (3) appeal was perfected to Carrier's chief operating officer - - Director of Personnel - - designated to handle such disputes on December 3, 1970, and having received no response from said officer **the** General Chairman wrote to **him** on March 1, 1971, imploring that he respond to the appeal; (4) no response having been received thereafter, the General Chairman, under **date** of April 6, 1971, wrote the Director of Personnel that since he had failed to respond to the appeal the General Chairman, was forwarding the claim to the Organization's President "for further handling as provided by the Railway Labor Act ;" (5) Organization by document **dated** May 17, 1972, addressed to the Executive Secretary of this Division, filed intention to submit the unsettled dispute to the adjudicatory processes of the Division.

We find that Carrier - - in the absence of contractual time limitations within which to **handle appeals** - - had a statutory duty, which it did not satisfy, to "Promptly" rule on the **appeal** filed with it on December 3, 1970. See Section 2 - - General Purposes; and, Section 2. First and Second of the **Railway** Labor Act which appear under the caption "General Duties." We, there fore, in **the** light of the facts of record, find that the **jurisdiction** of this Division was lawfully involved.

It is now **firmly** established, beyond cavil, that this Board in its consideration of a dispute is confined to the record made on the property. The Carrier in its submission has grossly strayed from the record. We, in our adjudication of the dispute, are compelled to ignore - - no probative value - - Carrier's arguments addressed to facts, rules and practices not part of the record **made** on the property. This Board, **by statute**, sits as an appellate body; not as a trial forum.

Claimant was regularly assigned as Night Chief Dispatcher, a position covered by the Agreement. Under Rule 4 (a) of the Agreement one of the emoluments vested in Claimant **as** consideration for his services is:

RULE 4 - REST DAY

(a) 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 when consecutive rest days would necessitate working any train dispatcher in excess of five (5) **days per week**.

Regularly assigned train dispatchers who are required to perform service on the rest days assigned to their position will be paid at rate of time and one-half for service performed on either or both of such rest days. (Emphasis Supplied)

Under that provision Claimant had an absolute vested right to compensation at time and one-half rate for service which Carrier required him to perform on one of his regularly assigned rest days. In the absence of a contractual provision to the contrary, Carrier stands enjoined from evading that contractual provision by assigning or permitting Claimant to work a position excluded from the Agreement. Under Section 2. of the Railway Labor Act the collective bargaining representative of **employees** covered by an agreement is required by statute to maintain its terms concerning rates of pay, rules, and working conditions. Neither an individual **employee** within the collective bargaining unit nor his employer may divert from positive prescriptions of a collective bargaining agreement.

We have studied Award No. 11286 which was cited by Carrier as supporting its position and argument. We find that the principle enunciated therein as supporting a denial award is not applicable in the instant case.

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 Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1973.