

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20002
Docket Number TD-20026

Frederick R. **Blackwell**, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Burlington Northern Inc.

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

(a) Burlington Northern Inc. (hereinafter referred to as "the **Carrier**") violated the Agreement in effect between the parties, Article 3(f) thereof in particular, when it combined territory, duties or responsibilities, and blanked train dispatcher positions to avoid using relief or extra train dispatchers to provide relief on rest days for established positions in its Alliance, Nebraska train dispatching office on September 12, September 19, September 26, and October 3, 1970.

(b) For the above violations, the Carrier shall now be required to **compensate** Claimant 3. E. **Roten**, the senior available train dispatcher in the Alliance, Nebraska office, eight (8) hours at the pro-rata rate of pay then applicable to trick train dispatchers for September 12, September 19, September 26, and October 3, 1970, respectively.

CLAIM #2

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Article 3(f) thereof in particular, when it combined territory, duties or responsibilities, and blanked train dispatcher positions to avoid using relief or extra train dispatchers to provide relief on rest days for established positions in its Alliance, Nebraska train dispatching office on October 10, October 17, October 24 and October 31, 1970, respectively.

(b) For the above violations, the Carrier shall now be required to compensate Claimant J. C. Hardy, the senior available train dispatcher in the Alliance, Nebraska office, eight (8) hours at the pro-rata rate of pay then applicable to trick train dispatchers for October 10, October 17, October 24, and October 31, 1970, respectively.

CLAIM #3

(a) Burlington Northern Inc. (**hereinafter** referred to as "the Carrier") violated the Agreement in effect between the parties, Article 3(f) thereof in particular, when it combined territory, duties or responsibilities, and blanked train dispatcher positions to avoid using relief or extra train dispatchers to provide relief on rest days for established positions in its Alliance, Nebraska train dispatching office on **November** 7, December 5, **December** 12, and December 19, 1970, respectively.

(b) For the above violations, the Carrier shall now be required to compensate Claimant L. R. Bentley, the senior available train dispatcher in the Alliance, Nebraska office, eight (8) hours at the pro-rata rate of pay then applicable to trick train dispatchers for November 7, December 5, December 12, and December 19, 1970, respectively.

CLAIM #4

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the Agreement in effect between the parties, Article 3(f) thereof in particular, when it combined territory, duties or responsibilities, and blanked train dispatcher positions to avoid using relief or extra train dispatchers to provide relief on rest days for established positions in its Alliance, Nebraska train dispatching office on November 28, 1970.

(b) For the above violation, the Carrier shall now be required to ~~com-~~
~~pensate~~ Claimant L. R. Bentley, the senior available train dispatcher in the Alliance, Nebraska office, eight (8) hours at the pro-rata rate of pay then applicable to trick train dispatchers for November 28, 1970.

OPINION OF BOARD: This dispute arises from the Carrier's action in ~~reducing~~
two temporary train dispatchers' positions, at Alliance, Nebraska, from seven (7) days to five (5) days per week without having an ~~agreement~~
with the Employees to take such action. The Employees contend that such action by Carrier violated Article 3(f) of the Agreement. The Carrier's position ~~is~~
that: (1) The Agreement does not prohibit the action complained of and, further, such action was proper under Article ~~11(f)~~ and (g); (2) the Organization has not met its burden of proof; and (3) the named Claimants are not proper claimants.

~~Carrier's~~ contention in (3) above is based upon errors respecting the names of the ~~claimants~~ and, ~~accordingly~~, this contention raises no substantive issue for Board ~~consideration~~. Thus, the sole issue before us is whether the Carrier ~~violated~~ the Agreement by the change from seven (7) to five (5) days without obtaining the Employees' ~~assent~~ thereto.

The facts in the case ~~are found in~~ Carrier instructions issued under date of August 8 and ~~September~~ 5, 1970.

"Alliance, Nebraska
August a, 1970

Effective 6:00 A.M. ~~Sunday~~, August 9, will establish 2 temporary dispatchers' positions. One from 6:00 A.M. to 2:00 P.M. and one from 2:00 P.M. to 10:00 P.M. to handle the territory ~~Edgemont~~ to Laurel and work the ~~middle~~ desk. Hardy will work 6:00 A.M. to 2:00 P.M., ~~Mays~~ will work from 2:00 P.M. to 10:00 P.M. Dispatchers affected by these 2 ~~relief~~ positions arrange to work rest days and will be unable to ~~furnish~~ any vacation relief until other arrangements can be ~~made~~."

"Alliance, Nebraska
September 5, 1970

My ~~lineup~~ of August 8, 1970 relative to establishing 2 temporary dispatchers' positions.

Now have authority only 5 days per week. Effective **Saturday**, September 12, these 2 positions will be blanked on **Saturday** and Sunday,"

Articles 3(f), ~~11(f)~~, and 11(g) read as follows:

"ARTICLE 3

**(f) COMBINING TERRITORY, DUTIES OR RESPONSIBILITIES
FOR RELIEF,**

The combining of territory, duties or ~~responsibilities~~, or the blanking of positions to avoid using relief or ~~extra~~ train dispatchers to provide relief on rest days for established positions, will not be permitted except by agreement between the Superintendent and Office Chairman subject to approval of the General Chairman."

"ARTICLE 11

(f) REGULAR POSITIONS

A regular position is one which includes four (4) ~~or~~ more days' train dispatching service per week, authorized for more than ninety (90) days or which has existed for more than ninety (90) days, except as provided in Note to Section (g) hereof."

(g) TEMPORARY POSITIONS.

A temporary position is a new position, or a vacancy on an existing regular position, on which there ~~are~~ five (5) or more work days' train dispatching service per week which is expected to continue, or has continued, not less than five (5) work days nor more than ninety (90) calendar days.

NOTE: Time limit may be extended by agreement between Office Chairman and Superintendent."

In studying the foregoing provisions, in **relation** to the instant facts, it **becomes** apparent that Carrier's position with regard to the provisions in Article **11(f)** and **(g)** is not sound. These provisions merely provide definitions of certain terms for use in determining the meaning of provisions appearing elsewhere in the Agreement; they cannot be said to have the substantive import given them by Carrier. The issue thus narrows itself to the meaning of Article **3(f)** and, more specifically, to whether, as the Employees contend, such Article prohibits the Carrier's action of September 5, 1970, because the Employees did not agree thereto. In urging the contrary position in its Submission, the Carrier asserts that five-day positions are "neither novel nor rare" and that, in fact, such positions have been established at Lincoln, Nebraska, Minneapolis, Minnesota, Grand Forks, North Dakota, Seattle and Tacoma, Washington, and Portland, Oregon. However, the Employees' **Reply** Brief showed by convincing evidence that the five-day positions at each of these points have resulted from agreements between the parties. One of the items of evidence, a May 4, 1964 Letter Agreement **respecting** a five-day position at Portland, Oregon, reads as follows:

"Authority **has** been received for a S-day position of Day Assistant Chief Train Dispatcher, Article 3(d) of schedule for train dispatchers effective October 1, 1952, reads as follows:

'Each train dispatcher position (including position of chief train dispatcher) shall be considered a rest day relief requirement. Combining or blanking positions for relief purposes shall not be permitted except by concurrence between the Superintendent and the General Chairman.'

It is the intent to assign this new positions 5 days per week with no relief on the two rest days.

If you have no objections to assigning this position 5 days per week with no relief on the rest days with the stipulation that it will in no way affect the application of Article 3 **(d)** of the above agreement in future cases, will you please indicate your approval on all three copies of this letter and return to **me** for signature, after which three copies will be returned for your file."

In light of the foregoing, and on the whole record, we conclude that the **evidence** of record conclusively shows that, by its own prior **conduct** and dealings with Article 3 **(f)**, the Carrier had interpreted Article 3 **(f)** to require an Agreement with the Employees in order to establish a **five-day** train dispatcher position in the manner which obtained in this

dispute. In those circumstances, after the seven-day **positions** were established on August 8, 1970, the Carrier could reduce such positions to **five-day** positions only by agreement with the Employees. Consequently, by unilaterally changing the positions from seven to five-day positions, without having the Employees' assent, the Carrier violated the Agreement and we shall sustain the claim. For a prior ruling similar to our ruling herein, see Award 10190 which involved the same text as in Article 3 (f); there, this Board said "The above Rule unmistakably provides that the combining or blanking of relief or extra dispatchers' positions can only be done by the agreement of the parties."

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

The Agreement was **violated**,

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of October 1973.