

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20052
Docket Number TD-20262

Dana E. Eischen, Referee

PARTIES TO DISPUTE: ((American Train Dispatchers Association
(Maine Central Railroad Company

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

(a) The Maine Central Railroad Company (hereinafter referred to as "the Carrier"), violated the Agreement in effect between the parties, Article IV (a) paragraph 3 thereof in particular, when it failed to properly compensate Claimant Train Dispatcher E. A. Wakefield for October 16, 1970, March 10 and July 29, 1971 respectively, and Claimant Train Dispatcher C. B. Wilson for February 21, 1971 which were individually and respectively seventh days on which train dispatcher service was performed following the completion of five (5) consecutive days of train dispatcher service as referred to in Agreement IV (a).

(b) For the above violations, the Carrier shall now compensate:

1. Claimant E. A. Wakefield one (1) day's compensation at time and one-half the basic straight time daily rate applicable to train dispatchers for October 16, 1970, March 10 and July 29, 1971 respectively; and

2. Claimant C. B. Wilson one (1) day's compensation at time and one-half the basic straight time daily rate applicable to train dispatchers for February 21, 1971.

OPINION OF BOARD: This dispute arises out of the Agreement between the parties, effective December 1, 1960. Article IV of that Agreement reads in pertinent part as follows:

"ARTICLE IV - REST DAYS AND RELIEF SERVICE

(a). Each regularly assigned Train Dispatcher will be entitled to 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 where 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.

"Extra Train Dispatchers who are required to work as Train Dispatchers in excess of five (5) consecutive days shall be paid one and one-half times the basic **straight-time** rate for work on either or both the sixth or seventh day but shall not have the right to claim work on such sixth or seventh days.

* * *

The above quoted Article IV derives from the National Agreement of March 25, 1949. Article **III**, Section 1 thereof reads as follows:

"ARTICLE III - FIVE DAY WEEK

Section 1. Rest Days

All existing agreements providing for one (1) rest day per week shall be revised so that effective **September 1, 1949**, they shall provide for two (2) regularly assigned rest days per **week**. Such assigned rest days shall be consecutive to the fullest extent possible. The carrier may assign non-consecutive rest days only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five (5) days per week. Also, to provide that 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.

Extra train dispatchers who are required to work as a train dispatcher in excess of five (5) consecutive days shall be paid **one and** one-half times the basic straight time rate for work **on** either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days."

The four claims herein were filed for time and one-half for extra train dispatcher service performed on the **respective** seventh day of the work week involved, the Claimants having performed five consecutive days of extra train dispatcher service and rested on the sixth day.

There is little disparity **between** the positions of the parties regarding the substantive **merits** of the instant claims. Petitioner relies heavily upon our recent sustaining Award Number 19549, (**Blackwell**) construing **substantially** identical contract language and circumstances. By letter dated

February 15, 1973, Carrier indicated that it was agreeable to handling future similar situations in the light of Award 19549. As to the instant Claims, however, Carrier interposed therein the objection that they were outlawed as untimely under the equitable doctrine of **laches** and accordingly denied them. Thereafter, in its Ex Parte Submission, Carrier declined to argue the merits of the claims but relied upon its procedural objections.

It appears from the record that the appeal of these claims to our Board came respectively, 14 months and 2 years after they had been last processed on the property. Carrier claims that such delay is contrary to the letter and intent of the Railway Labor Act, Section 2 (5) and constitutes **laches**. Petitioner answered that neither the Act nor the instant Agreement stipulate a specific time limit for such matters and moreover, that Carrier has not made out a case for the equitable defense of **laches**.

A careful review of prior awards of this Division demonstrates that important but ephemeral criteria such as "orderly settlement of disputes" and "equity" do not lend themselves to rigid and mechanical application. Accordingly the application of those guidelines in consideration of many varying claims and circumstances has resulted in awards both sustaining and rejecting so-called "**laches**" objections before the Board. (See **2576, 6996, 13239; cf., 2925, 6504, 14016**).

In considering Carrier's procedural objection, we note that the claims here are not continuing, but rather **become "crystallized"** at the time of occurrence of the alleged violation. Accordingly, the claim for damages **has** not been increased or compounded to Carrier's detriment by the delay. Likewise, the record indicates that Petitioner was processing its claim in the aforementioned Award 19549 at the approximate time the instant claims reached maturation. Shortly after that Award was issued, the instant claims were progressed to the Board. While prompt resolution of claims is mandated by the Act, it cannot be **gainsaid** that orderly settlement is of equal importance in the statutory scheme. In this connection, Petitioner's desire to avoid multiple similar claims before the Board is understandable. Indeed, the decision in Award 19549 has been approved for prospective application by the Carrier herein, albeit it involved an agreement between Petitioner and another Carrier.

In the circumstances of this case, we are of the opinion that the instant claims are not barred in equity or in law and, accordingly the claims 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 Employes involved in this dispute are respectively Carrier and **Employes** 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 **herin**; and

That the Agreement was violated.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1973.