

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20688

Docket Number m-20624

Robert A. **Franden**, Referee

PARTIES TO DISPUTE: ((American Train Dispatchers Association
(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 22 (a) thereof in particular, when it refused to compensate the individual Claimants named in part (b) below for loss of time on their regular assignments on the claim dates shown in part (b) below when as a result of **per-**forming service on other than their regularly assigned positions as directed and instructed by Carrier, Claimants did not perform service on their regularly assigned positions obtained by an exercise of seniority provided in the Agreement, thereby losing time.

(b) Because of said violation, the Carrier shall now **compensate** the individual Claimants as follows:

(1) **Claimant T. M. Hagen** eight (8) hours pro-rata of trick dispatcher's rate for each date October 28, 29, **November 4, 11, 12, 13, December 16, 23, 24, 25, 30, 31, 1970, January 1, 6, 7, 8, 13, 1971;**

(2) Claimant P. M. **McNamara** eight (8) hours **pro-**rata of Night Chief Dispatcher's rate on each date November 3, 4, 5, 6, 7, December 15, **16, 17, 18, 19, 1970, March 2, 3, 1971;**

(3) Claimant R. L. Hamilton eight (8) **hours** pro-rata of trick dispatcher's rate on each date November 5, 6, 7, December 17, 18, 19, 24, 25, 26, 1970, March 4, 5, 6, **11, 12, 13, 18, 19, 20, 1971, and eight (8) hours** pro-rata of Night Chief Dispatcher's rate on each date March 14, 15, 21, 22, 1971;

(4) Claimant D. **J. Binder** eight (8) hours **pro-**rata of trick dispatcher's rate on each date October 16, 23, 30, 31, November 6, 7, **13, 20, 27, December 4, 11, 18, 19, 1970, January 15, 1971.**

OPINION OF BOARD: Claimants were the regularly assigned train dispatchers in the Carrier's Stevens Point, Wisconsin train dispatch office. On the claim dates, the Claimants were instructed by the Carrier to perform services other than on their regularly assigned positions. **The** Claimants were compensated on the days in question under **Rule 3(c)** which requires, with **some exceptions, payment** at the **punitive** rate for performing service outside of their regularly assigned position. Rule 3 (c) reads as follows:

"(c) Assigned assistant and/or night chief dispatchers and trick train dispatchers who are directed by the management to perform **service** as trick train dispatcher outside of their regular assigned position will be **compensated** at the rate of time and one-half of the trick train dispatcher position filled. Penalty **time** under this agreement will not apply to **employees who** obtain new assignments through the exercise of seniority, until initial service performed **on** new assignment, or when directed to perform service as chief, assistant and/or night chief dispatcher."

The Claimants allege that due to the provisions of Rule 22 (a) they are entitled, in addition to compensation under Rule 3 (c), to compensation at the pro-rata rate of their regular position. **Rule 22 (a)** reads as follows:

"(a) Loss of time **on** account of the Hours of Service Law or in changing positions by direction of proper authority shall be paid for at the rate of the position for which service was performed immediately prior to such change. Time lost in voluntarily exercising seniority will not be paid for."

It is the Carrier's position that Rule 3(c) was included in the agreement to cover the specific set of circumstances present in this case. The Organization takes the position that inasmuch as **Rule 3 (c)** does not contain an **estoppel** the additional compensation under Rule 22 (a) is required.

We are persuaded by the record and the history of **Rule 3(c)** that said Rule was intended to cover such circumstances as those present in the instant case. The specific purpose of the Rule is to **determine** compensation for work performed other than on regular **assignment**. The Carrier compensated the Claimants as required by the Rule.

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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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.

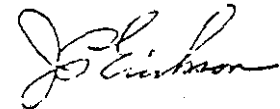
Labor Member's Dissent to Award 20688, Docket TD-20624

As the Statement of Claim in Award 20688 shows, the **claims** were based on **Rule 22 (a)** and the record in Docket TD-20624 contained sufficient Award authority to require that at least **some**, if not all, of the claims be sustained.

Award 20688 correctly recognizes the **Employees'** primary contention, stating "The Organization takes the position that inasmuch as **Rule 3 (c)** does not contain an estoppel the additional compensation under **Rule 22 (a)** is required". Yet Award 20688 denies the claim, stating "We are persuaded by the record and the history of **Rule 3 (c)** that said Rule was intended to cover such circumstances as those present in the instant case".

Ignoring the Award authority in evidence and the fact that **Rule 3(c)** did not contain an estoppel, Award 20688 creates and places an estoppel in **Rule 3 (c)** making a change in the Agreement which is a task that can only be properly accomplished by the parties to the Agreement. The National Railroad Adjustment Board was established by the Railway Labor Act to settle disputes by interpretation or application of Agreements as written. The Railway Labor Act also provides the mechanics whereby Agreements can be changed by the parties but this is not a function or duty of the National Railroad Adjustment Board.

The Majority in Award 20688 clearly failed to confine itself to matters within the scope of the Third Division's Jurisdiction when the Agreement was, in effect, changed and I must dissent.



J. P. Erickson
Labor Member