

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21300  
Docket Number TD-20883

Joseph A. Sickles, Referee

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

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

(a) **The** Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated and continues to violate the effective Agreement between the parties, Article 3(f) thereof in particular, by its action in establishing the position of Assistant Chief Dispatcher in the Hannibal, Missouri office between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday, with no provision for relief of the position on Saturdays and Sundays; and combining the duties and responsibilities of that position with other positions in the office on such Saturdays and Sundays to avoid using relief or extra train dispatchers to provide proper relief of the position.

(b) Because of said violation, the Carrier shall now be required to compensate the senior available qualified extra train dispatcher one day's pay at the pro rata rate of Assistant Chief Dispatcher for each respective Saturday and Sunday beginning Saturday, January 27 and Sunday, January 28, 1973, and for each succeeding Saturday and Sunday until said violation ceases.

(c) In the event no qualified extra train dispatchers are available on any of the days in the period defined in paragraph (b) above, Carrier shall then be required to compensate the senior qualified regularly assigned train dispatcher who is available due to observance of his weekly rest day, one day's compensation at the punitive rate of Assistant Chief Dispatcher for each of such days.

(d) Eligible individual Claimants entitled to the compensation claimed herein are readily identifiable and shall be determined by check of Carrier's records.

OPINION OF BOARD: Carrier established an Assistant Chief Dispatcher position at Hannibal, Missouri, effective January 1, 1973 with hours of 7:59 a.m. to 3:59 p.m. and assigned rest days of Saturdays and Sundays.

Because they assert that Carrier failed to provide relief on assigned rest days (but rather blanked the position and combined duties and responsibilities with other positions), the Employees assert 8 violation of Rule 3(f):

"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."

Carrier asserts that the claim is defective because it was untimely filed and because it failed to properly designate the Claimants with specificity. **Based** upon our disposition of **the** dispute herein, it is unnecessary to rule on those contentions.

The Employees seem **to** suggest that their agreement is required in order for Carrier to establish 8 five-day position. **But**, in order for us to find 8 violation, we feel that it is incumbent upon the Organization to demonstrate that Carrier's action **was** one of avoidance.

**Our** review of the matter, **as** handled on the property, leads us to conclude **that** no such showing was made. The initial claim states that duties and responsibilities were combined so as to avoid use of relief employees, but it presents no substantiation of that conclusion. Further, the employees seek to justify its claim by the assertion that the "...work attaching to the position does not disappear on Saturday's and Sundays... but must be combined with the territory and duties of other positions as an inescapable and practical **matter**."

It was established, in a dispute between these parties, that reliance on inferences, as 8 basis for an asserted violation of Article 3(f), is not a substitute for proof (see Award 20567). In this regard, it is interesting to note that in its May 24, 1973 correspondence, Carrier **stated** that "...the Organization had requested that the Carrier establish a 5-day position to assist the Chief Dispatcher Monday through **Friday** of each week." In its reply, the Organization stated, "...It is true that the Organization requested the addition of a position **at** Hannibal to assist the Chief Dispatcher Monday through Friday." However, the **Employees** assert that its request cannot be construed 8s license to violate the agreement.

As we read the agreement, Carrier requires **an** agreement if it desires to combine territories, **duties** or responsibilities, or blank positions to avoid using relief or **extra employees** for relief on rest days for established positions. **But**, in order to establish a violation of Article 3(f) if Carrier fails to enter into an agreement, there must be a showing that Carrier took **certain** actions to avoid use of relief or extra positions. As stated above, we find no evidence that Carrier so intended, or that such events actually occurred. In fact, it appears that the position **was** established, not in an **effort** to avoid utilization, but rather, at the specific request of the Organization.

Award 20002, relied upon by the Claimant, is not pertinent to this dispute. That case dealt with a reduction of 7-day positions to 5-day positions and suggests that there was a combining of positions.

We will dismiss the claim for failure of proof.

**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 claim will be dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1976.