

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23018
Docket Number TD-22848

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Seaboard Coast Line Railroad Company

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

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as the 'Carrier') violated the effective agreement between the parties, Article III(a) and (b) thereof in particular, when it refused to compensate Train Dispatcher H. E. Mullinax at time and one-half rate for service performed on March 27 and 28, 1976.

(b) The Carrier shall now be required to compensate Train Dispatcher H. E. Mullinax the difference between straight time or pro rata rate which he was paid and one and one-half times the daily rate of trick train dispatcher to which he was entitled on the dates and in accordance with the rules cited in paragraph (a) above."

OPINION OF BOARD: The facts of this claim are undisputed. At the time this dispute arose, the Claimant was regularly assigned as trick train dispatcher to a second shift position, Western District, at Florence, South Carolina, with assigned weekly rest days Saturday and Sunday. On Thursday, March 25, 1976, the rest days of his position were changed from Saturday and Sunday to Monday and Tuesday. Claimant worked seven consecutive days, Monday, March 22, 1976 through Sunday, March 28, 1976 and was paid at the straight time rate of pay.

A claim was instituted for the time and one-half rate instead of the straight time rate of pay which he was paid for service on Saturday and Sunday, March 27 and 28, 1976. The governing Agreement provisions are Article III, sections (a), (b) and (d), which read in pertinent part as follows:

"ARTICLE III

(a) Rest Days

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.

"Unless prevented by the requirements of the service, extra train dispatchers will be relieved from train dispatcher **service** for a period of two (2) days for rest day purposes after they have performed five (5) consecutive days' work as train dispatcher.

Such 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** a train dispatcher **in** excess **of** five (5) days per week.

(b) Service on Pest Days

Regularly assigned train dispatchers who are required to perform service **on** 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.

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(d) Change in Pest Days

The **Company** shall designate established rest **days** for each position in accordance with paragraph (a) of this Article. Not less than seventy-two (72) hours' notice shall be given of change in **assignment** of **any** rest days."

The Carrier raises several equitable **arguments supporting** its refusal to compensate **Claimant at the penalty rate**. The Carrier first argues that **Claimant** could have exercised seniority rights in accordance with Article IV (c) (5) of the Agreement, which reads as follows:

"ARTICLE IV

* * * * *

(c) Exercise of Seniority

* * * * *

- (5) By the **train** dispatcher affected when his assigned weekly rest days are **changed** or when there **is** a **change** of more **than one** hour **in** the starting time of his assignment."

The Carrier asserts **that**, since **it** gave a **ten-day** notice of the charge of rest days, **Claimant** had ample **time** to consider the change **and** exercise his **seniority** rights to **avoid working more than a five-day week**.

The Carrier next poses a hypothetical situation:

"If the rest days of the second shift had not **been** changed **on** March 25, Claimant would have worked twelve **(12)** days **and** had four (4) **rest days during** the second pay **period (March 16-31, inclusive)**. With the **change** in rest days, **Claimant** still worked twelve **(12)** days **and** had four **(4) rest days during the same period**. If the **change** had been made effective on **Monday**, March 22 or **March 29** the day **following** his Saturday and Sunday rest days, he would have lost two (2) days **paid** as **he would have worked** only ten (10) **instead** of the **normal** twelve **(12)** days during the period **March 16-31**."

The Carrier puts **much emphasis** on the fact that **Claimant** elects the **second shift assignment**. By so electing, argues the Carrier, Claimant accepted the rest days of that assignment which were **Monday** and Tuesday, not Saturday and Sunday.

The Carrier's **arguments** do not suffer for lack of merit, but contract **language and** awards previously issued by this Board support the Organization. Article III (a) gives each regularly assigned **train** dispatcher two rest days per week. A week **consists** of five work days followed by two rest days. **When** a dispatcher is required to work his rest days, Article III (b) requires that he be compensated at the time **and** one-half rate. Referee Daugherty **concurs in** Award 5897:

"...It is clear that, except for **emergencies** and other **unusual** situations, the Parties **meant** to establish (1) a work period of five consecutive work days; (2) an ensuing **rest** period of two **consecutive days**; and (3) a penalty **on** the Carrier, in the form of **premium pay**, for the hours **it** requires its dispatchers to work on such rest days. From this we think it follows that they **meant** to **define 'week'** as a period of seven **days beginning** with the first of five consecutive work days..."

In regard to the Carrier's argument that Claimant, by **electing** to **remain in** his position, effectively created a **new assignment** for himself and nullified his claim, this Board refers to Referee Carter in Third Division Award 7319:

"A change in rest days does not have the effect of terminating the old assignment **and creating** a new one where the occupant **does** not exercise his seniority. If such were the case the change of rest days would require that the new position be bulletined. This means, also, that the position **remains** the **same** irrespective of the **change** in rest days and consequently there is **no moving** from one assignment to **another**. Awards 5586, 5807. The fact that the occupant of the **position may** exercise his **seniority rights after a change in rest days** does not appear to affect the **situation** when the right has not been exercised. We **must necessarily come** to the **conclusion** that the Carrier has the right, after notice, to **change** the rest days of a **position** and thereby change the **workweek** of the position, but it **remains** the **same** assigned position throughout..."

This Board **accordingly** sustains the claim.

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 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 **17th** day of October **1980**.