

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23470
Docket Number TD-23389

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Missouri-Kansas-Texas Railroad Company

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

(a) **The Missouri-Kansas-Texas Railroad Company** (hereinafter referred to as "the Carrier"), violated its Train Dispatchers schedule working **conditions agreement**, including Articles 3(a) and (b), **and 4(b)** thereof, when, beginning approximately July 1, 1968 it failed to appropriately **compensate** several train **dispatchers** at the rate of time **and one-half** for services **performed** on their weekly **rest** days in the instance of regularly **assigned** train dispatchers, **and sixth and/or seventh consecutive days** of train dispatcher service **in the instance** of extra train dispatchers.

(b) Because of said violation, the carrier **shall now compensate** the individual train dispatcher claimants, referred to in **paragraph (a)** above, the difference between **time and one-half** the daily rate of **compensation** applicable to the **train dispatcher** position worked, **and the amount** previously allowed them **for such train dispatcher services beginning** approximately July 1, 1968 and continuing until such **time as proper time and one-half compensation** is being paid on a current basis.

(c) The identity of the **individual claimants and** their involved claim dates shall be determined by a joint check of **the** carrier's records.

OPINION OF BOARD: The agreement between the parties provides that the **employees** are entitled to time and one-half payment for service **performed** on rest days and in certain other instances.

Article 4 states that:

"**Train** Dispatchers shall be monthly employees but the monthly compensation shall be computed **on** a daily basis."

and **Article 4(b)** states that the daily rate of **pay shall be determined** by multiplying the regular **monthly** rate by 12 and dividing the result by 261.

In March of 1979, the employees advised that they **were** being paid for rest day service at time **and one-half** the hourly rate, rather than time and one-half the daily rate.

Although the Organization asserts that the Manager of Personnel advised that said **payroll** practice would be altered, nonetheless the **Carrier** failed to do so, and it **continued** to compensate the employees in the objectionable **manner**, which prompted this claim.

When the **matter** was brought to the attention of the **Manager** of Personnel on March 22, 1979, he Issued a reply four days later, in which he stated:

"I am unable to determine just when or on what occasions the instructions contained...**have** not been followed, however, we are re-issuing Instructions to insure that Train Dispatchers used **for** Service on rest days are **compensated** at one and one-half **times** the daily **rate** instead of the punitive hourly rate basis."

The Carrier subsequently responded to the claim that It was "too vague and indefinite" to constitute a proper claim, and that there **was** no agreement support. In a later denial, the Carrier raised the doctrine of **laches**, as well as the assertion that the claim was too vague and indefinite and was without **agreement** support.

As we have reviewed this claim, it submits a request for reimbursement which encompasses a period of 11 years.

The Board has difficulty with the Organization's contentions in this claim. Without **immediate** regard to the doctrines of **laches**, Railway Labor Act requirements of reasonable diligence in **progression** of claims, and related **matters**, it appears to **us** that when a group of employees accepts the method of computing certain payments for an 11 year period, there is an acquiescence in such **practice**, and in order to ignore that indication of the manner in **which** the parties have applied certain **obligations** we would require a much stronger showing of an obvious violation than we have before **us**. We **will** **dis-**miss the Claim for lack of support.

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

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That the ~~Claim~~ be ~~dismissed~~.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of ~~Third~~ Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.