

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25434
Docket Number TD-25362

M. David Vaughn, Referee

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

CLAIM #1 - Carrier file 34-160-40-1

(a) "...**present** arrangement of rest day assignments on dispatcher's positions commonly referred to as DS-1-2, DS-3, DS-4 and DS-KI are in violation of the Agreement between the A.T.S.F. Ry. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4 with Section 2 of Article V defining continuous cycle positions pertinent thereto."

(b) "...**therefore**, pay to the oldest unassigned train dispatcher available on each first trick and second trick on **each** of the following days **one** day at dispatcher's rate for the consolidation of 3 dispatching positions into 2 for rest day purposes. On any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatcher's rate instead.

Days for which this compensation is claimed are as follows:

First Trick

Second Trick

Saturday, April 22, 1978
Sunday, April 23, 1978
Saturday, April 29, 1978
Sunday, April 30, 1978
Saturday, May 6, 1978
Sunday, **May** 7, 1978
Saturday, May 13, 1978
Sunday, **May** 14, 1978

Saturday, April 22, 1978
Sunday, April 23, 1978
Saturday, April 29, 1978
Sunday, April 30, 1978
Saturday, May 6, 1978
Sunday, **May** 7, 1978
Saturday, May 13, 1978
Sunday, **May** 14, 1978

(c) Further, inasmuch as the consolidation for rest days referred to above constitute 4 days work per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them five (5) days' work each week' an additional day at dispatcher's rate is claimed for each Thursday (April 20, 27, May 4, 11, 1978) **preceeding (sic)** the week-ends of consolidation. This will likewise be paid to the oldest unassigned train dispatcher available, and if **none** were available, time and one-half will be paid to the oldest regularly assigned dispatcher **or** assistant chief dispatcher available and on rest day."

CLAIM #2 - Carrier file 34-160-40-1

(a) "...**present** arrangement of rest day assignments on Dispatcher's positions **commonly** referred to as DS-1-2, DS-3, DS-4 and DS-KI are in violation of the Agreement between the A. T. & S. Fe Ry. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. This is a claim for compensation as set forth below.

(b) "...**therefore**, pay to the oldest unassigned train dispatcher available on each first trick and second trick on each of the following days one day at dispatcher's rate for the consolidation of 3 dispatching positions into 2 for rest day purposes. On any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatcher's rate instead.

Days for which this compensation is claimed are as follows:

<u>First Trick</u>	<u>Second Trick</u>
Saturday, May 20, 1978	Saturday, May 20, 1978
Sunday, May 21, 1978	Sunday, May 21, 1978
Saturday, May 27, 1978	Saturday, May 27, 1978
Sunday, May 28, 1978	Sunday, May 28, 1978
Saturday, June 3, 1978	Saturday, June 3, 1978
Sunday, June 4, 1978	Sunday, June 4, 1978
Saturday, June 10, 1978	Saturday, June 10, 1978
Sunday, June 11, 1978	Sunday, June 11, 1978

(c) Further, inasmuch as the consolidation for rest days referred to above constitutes 4 days work per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them five (5) days' work each week' an additional day at dispatcher's rate is claimed for each Thursday (May 18, 25, June 1, 8, 1978) **preceeding (sic)** the week-ends of consolidation. This will likewise be paid to the oldest unassigned train dispatcher available, and if none **were** available, time and one half will be paid the oldest regularly assigned dispatcher or assistant chief dispatcher available and on rest day...."

CLAIM #3 - Carrier file 34-160-40-2

(a) "...**present** arrangement of rest days and assignments on dispatcher's positions commonly referred to as DS 1-2, DS 3 and DS 4-KI are in violation of the Agreement between the A. T. & S. F. Ry. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. The violation occurs each Saturday and Sunday on first and second trick when two dispatchers are required to handle the territories assigned on a continuous cycle basis 5 days per week to three dispatchers. Instead of providing the required rest day relief dispatcher, you are dividing dispatching territory of DS 4-KI placing the '**KI**' portion with DS 3 and the '**4**' portion with DS 1-2. This provides Saturday and Sunday rest days for both first and second trick DS 4-KI without assignment of a relief dispatcher....

(b) "We are therefore making a claim for and you will pay to the oldest unassigned train dispatcher available on each first trick and second trick on each of the Saturdays and Sundays listed below one day at dispatchers rate because of this consolidation of 3 dispatching positions into 2 for rest day purposes. On any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatchers rate instead.

Days for which this compensation is claimed are as follows:

<u>First Trick</u>	<u>Second Trick</u>
Saturday, June 17, 1978	Saturday, June 17, 1978
Sunday, June 18, 1978	Sunday, June 18, 1978
Saturday, June 24, 1978	Saturday, June 24, 1978
Sunday, June 25, 1978	Sunday, June 25, 1978
Saturday, July 1, 1978	Saturday, July 1, 1978
Sunday, July 2, 1978	Sunday, July 2, 1978

(c) Further, inasmuch as the consolidation for rest days referred to above constitutes 4 days work per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them (5) days' work each week' an additional day at dispatcher's rate is claimed for each Thursday (June 14, 21 and 28, **1978**) **preceeding** (sic) the week-ends of consolidation. This will likewise be paid to the oldest unassigned train dispatcher available, and if none were available, time and **one-** half will be paid the oldest regularly assigned dispatcher or assistant chief dispatcher available and on rest day...."

CLAIM# 4 - Carrier file 34-160-40-3

(a) "...**present** arrangement of rest days and assignments on dispatcher's positions commonly referred to as DS 2-1, DS 3 and DS **4-KI** are in violation of the Agreement between the A.T. & S.F. Ry. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. The violation occurs each Saturday and Sunday on first and second trick when two dispatchers are required to handle the territories assigned on a continuous cycle basis 5 days per week to three dispatchers. Instead of providing the required rest day relief dispatcher, you are dividing the dispatching territory of DS 4~~W~~placing the '**KI**' portion with DS 3 and the '**4**' portion with DS 1-2. This provides Saturday and Sunday rest days for both first and second trick DS 4~~W~~without assignment of a relief dispatcher....

(b) We are, therefore. making a claim for and you will pay to the oldest unassigned train dispatcher available on each first trick and second trick on each of the Saturdays and Sundays listed below one day at dispatchers rate because of this consolidation of 3 dispatching positions into 2 for rest day purposes. On any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatchers rate instead. Days for which this compensation is claimed are as follows:

*First Trick

Second Trick

Saturday, July 8, 1978
Sunday, July 9, 1978
Saturday, July 15, 1978
Sunday, July 16, 1978
Saturday, July 22, 1978
Sunday, July 23, 1978
Saturday, July 29, 1978
Sunday, July 30, 1978

Saturday, July 8, 1978
Sunday, July 9, 1978
Saturday, July 15, 1978
Sunday, July 16, 1978
Saturday, July 22, 1978
Sunday, July 23, 1978
Saturday, July 29, 1978
Sunday, July 30, 1978

(c) Further, inasmuch as the consolidation for rest days referred to above constitute 4 days **work** per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them 5 days' work each week' an additional day at dispatcher's rate is claimed for each Thursday (July 6, 13, 20 and 27) **preceeding (sic)** the week-ends of consolidation. This will likewise be paid to the oldest unassigned train dispatcher available, and if none were available, time and one half will be paid the oldest regularly assigned dispatcher or assistant chief dispatcher available on rest day...."

CLAIM #5 - Carrier file 34-160-40-4

(a) "...**present** arrangement of rest days and assignments on dispatcher's positions commonly referred to as DS 1-2, DS 3 and DS 4 are in violation of the Agreement between the A.T. & S.F. Ry. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. The violation occurs each Saturday and Sunday on first and second trick when two dispatchers are required to handle the territories assigned on a continuous cycle basis 5 days per week to three dispatchers. Instead of providing the required rest day relief dispatcher, you are dividing dispatching territory of DS 4, placing the '**KI**' portion with DS 3 and the '**4**' portion with DS 1-2. This provides Saturday and Sunday rest days for both first and second trick DS **4-KI** without assignment of a relief dispatcher....

(b) We are, therefor. making a claim for and you will pay to the oldest unassigned train dispatcher available on each first trick and second trick on each of the Saturdays and Sundays listed below one day at dispatchers rate because of this consolidation of 3 dispatching positions into 2 for rest day purposes. On any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatchers rate instead. Days for which this compensation is claimed are as follows:

First Trick

Second Trick

Saturday, August 5, 1978
Sunday, August 6, 1978
Saturday, **August** 12, 1978
Sunday, August 13, 1978
Saturday, August 19, 1978
Sunday, August 20, 1978
Saturday, August 26, 1978
Sunday, **August** 27, 1978

Saturday, August 5, 1978
Sunday, August 6, 1978
Saturday, August 12, 1978
Sunday, **August** 13, 1978
Saturday, August 19, 1978
Sunday, August 20, 1978
Saturday, August 26, 1978
Sunday, **August** 27, 1978

(c) 'Further, inasmuch as the consolidation for rest days referred to above constitutes 4 days work per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them 5 days' work each week' an additional day at dispatcher's rate is claimed for each Thursday (August 3, 10, 17, and 24) preceeding (sic) the weekends of consolidation. This likewise will be paid to the oldest unassigned train dispatcher available, and if none were available, time and one half will be paid the oldest regularly assigned dispatcher or assistant chief dispatcher available on rest day...."

CLAIM #6 - Carrier file 34-160-40-s

(a) "...present arrangement of rest days and assignments on dispatcher's positions commonly referred to as DS 1-2, DS 3 and DS 4-KI are in violation of the Agreement between the A.T. & S.F. Ry. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. The violation occurs each Saturday and Sunday on first and second trick when two dispatchers are required to handle the territories assigned on a continuous cycle basis 5 days per week to three dispatchers. Instead of providing the required rest day relief dispatcher, you are dividing dispatcher territory of DS 4-KI, placing the 'KI' portion with DS 3 and the '4' portion with DS 1-2. This provides Saturday and Sunday rest days for both first and second trick DS 4-KI without assignment of a relief dispatcher....

(b) We are, therefore, making a claim for and you will pay to the oldest **unassigned** train dispatcher available on each first trick and second trick on each of the Saturdays and Sundays listed below, one day at dispatchers rate because of this consolidation of 3 dispatching positions into 2 for rest day purposes. On any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatchers rate instead. Days for which this compensation is claimed are as follows:

<u>First Trick</u>	<u>Second Trick</u>
Saturday, Sept. 2, 1978	Saturday, Sept. 2, 1978
Sunday, Sept. 3, 1978	Sunday, Sept. 3, 1978
Saturday, Sept. 9, 1978	Saturday, Sept. 9, 1978
Sunday, Sept. 10, 1978	Sunday, Sept. 10, 1978
Sunday Sept. 17, 1978	Saturday, Sept. 16, 1978
	Sunday, Sept. 17, 1978
	Sunday, Sept. 24, 1978
	Saturday, Sept. 30, 1978
	Sunday, Oct. 1, 1978

(c) 'Further, inasmuch as the consolidation for rest day purposes referred to above constitutes 4 days **work** per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them 5 days' work each week' an additional day at dispatcher's rate is claimed for each Thursday (Sept. 7, 14 and **21**) preceeding (**sic**) the week-ends of consolidation. This likewise will be paid to the oldest unassigned train dispatcher available, and if none were available, time and one half will be paid the oldest regular assigned dispatcher or assistant chief dispatcher available on rest day....'

CLAIM #7 - Carrier file 34-160-40-6

(a) "...**present** arrangement of rest days and assignments on dispatcher's positions commonly referred to as DS 1-2, DS 3 and DS **4-KI** are in violation of the Agreement between the A.T. & S.F. Ry. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. The violation occurs each Saturday and Sunday on first and second trick when two dispatchers are scheduled to handle the territories assigned on a continuous cycle basis 5 days per week to three dispatchers. Instead of providing the required rest day relief dispatching position, you are dividing dispatcher territory of DS 4-KI, placing the '**KI**'portion with DS 3 and the '**4**' portion with DS 1-2. This provides Saturday and Sunday rest days for both first and second trick DS 4-KI without assignment of a relief dispatcher....

(b) We are, therefore, making a claim for and you will pay to the oldest unassigned train dispatcher available on each... second trick on each of the Saturdays and Sundays listed below, one day at dispatchers rate because of this consolidation of 3 dispatching positions into 2 for rest day purposes. On any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatchers rate instead. Days for which this compensation is claimed are as follows:

Second Trick

Saturday, October 7, 1978	Saturday, October 21, 1978
Sunday, October 8, 1978	Sunday, October 22, 1978
Saturday, October 14, 1978	Sunday, October 29, 1978
Sunday, October 15, 1978	

(c) Further, inasmuch as the consolidation for rest day purposes referred to above constitutes 4 days work per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them 5 days' work each week' an additional day at dispatcher's rate is claimed for each Thursday (Oct. 5, 12, 19 and **26**) preceeding (**sic**) the week-ends of consolidation. This likewise will be paid to the oldest unassigned train dispatcher available, and if none were available, time and one half will be paid the oldest regularly assigned dispatcher or assistant chief dispatcher available on rest day...."

CLAIM #8 - Carrier file 34-160-40-7

(a) "...present arrangement of rest days and assignments on dispatcher's positions commonly referred to as DS 1-2, DS 3 and DS 4-KI are in violation of the Agreement between the A. T. & S.F. Ry. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. The violation occurs each Saturday and Sunday on first and second trick when two dispatchers are scheduled to handle the **territories** assigned on a continuous cycle basis 5 days per week to three dispatchers. Instead of providing the required rest day relief dispatching position, you are dividing dispatcher territory of DS **4-KI**, placing the '**KI**' portion with DS 3 and the '4' portion with DS 1-2. This accomplishes Saturday and Sunday rest days for both first and second trick DS **4-KI** without assignment of a relief dispatcher....

(b) We are, therefore, making a claim for and you will pay to the oldest unassigned train dispatcher available on each first trick and second trick on each of the Saturdays and Sundays listed below, one day at dispatchers rate because of this consolidation of 3 dispatching positions into 2 for rest day purposes. On any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatchers rate instead. Days for which this compensation is claimed are as follows:

<u>First Trick</u>	<u>Second Trick</u>
Saturday, Nov. 4, 1978	Saturday, Nov. 4, 1978
Sunday, Nov. 5, 1978	Sunday, Nov. 5, 1978
Sunday, Nov. 12, 1978	Saturday, Nov. 11, 1978
Saturday, Nov. 18, 1978	Sunday, Nov. 12, 1978
Sunday, Nov. 19, 1978	Saturday, Nov. 18, 1978
Saturday, Nov. 25, 1978	Sunday, Nov. 19, 1978
Sunday, Nov. 26, 1978	Saturday, Nov. 25, 1978
	Sunday, Nov. 26, 1978

(First trick Saturday, Nov. 11, 1978 not combined)

(c) Further, inasmuch as the consolidation for rest day purposes referred to above constitute 4 days work per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them 5 days' work each week' an additional day at dispatcher's rate is claimed for each Thursday (Nov. 2, 9, 16, 23 and 30, 1978) **preceeding** (sic) week-ends of consolidation. This likewise will be paid to the oldest unassigned train dispatcher available, and if none were available, time and one half will be paid the oldest regularly assigned dispatcher or assistant chief dispatcher available on rest day....'

CLAIM #9 - Carrier file 34-160-40-g

(a) "...**present** arrangement of rest days and assignments on dispatcher% positions commonly referred to as DS 1-2, DS 3 and DS 4-KI are in violation of the **Agreement between** the AT&SF Rwy. Co. and the American Train Dispatchers Association, more specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. The violation occurs each Saturday and Sunday on first and second trick when two dispatchers are scheduled to handle the territories assigned on a continuous cycle basis 5 days per week to three dispatchers. Instead of providing the required rest day relief dispatching positions, you are dividing dispatcher territory of DS **4-KI**, placing the '**KI**' portion with LX 3, and the '4' portion with DS 1-2. This accomplishes Saturday and Sunday rest days for both first and second trick DS 4-KI without assignment of a relief dispatcher....

(b) We are, therefore, making a claim for and you will pay to the oldest unassigned train dispatcher, or the oldest rested train dispatcher available on assigned rest days, on each first trick and second trick on each of the Saturdays and Sundays listed below, one day at dispatchers rate because of this consolidation, of three dispatching positions into two for rest-day purposes. **On** any such tricks that there were no unassigned train dispatchers available, the oldest available assigned train dispatcher or assistant chief dispatcher on rest day will be paid one and one-half times the regular train dispatcher's rate instead. Days for which this compensation is claimed are as follows:

<u>First Trick</u>	<u>Second Trick</u>
Sunday, Dec. 3, 1978	Sunday, Dec. 3, 1978
Saturday, Dec. 9, 1978	Saturday, Dec. 9, 1978
Sunday, Dec. 10, 1978	Sunday, Dec. 10, 1978
Saturday, Dec. 16, 1978	Saturday, Dec. 16, 1978
Sunday, Dec. 17, 1978	Sunday, Dec. 17, 1978
Sunday, Dec. 24, 1978	Sunday, Dec. 24, 1978
Saturday, Dec. 30, 1978	Saturday, Dec. 30, 1978
Sunday, Dec. 31, 1978	Sunday, Dec. 31, 1978

(First trick Saturdays **Dec.** 2 and Dec. 23 not combined)

(c) Further, inasmuch as the consolidation for rest day purposes referred to above constitute 4 days work per week and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them 5 day's work each week', an additional day at dispatchers' rate is claimed for each Thursday (Dec. 7, 14, 21 and 28, 1978) preceeding (**sic**) week-ends of consolidation. This likewise will be paid to the oldest unassigned train dispatcher available, and if none were available, time and one half will be paid to the oldest regularly assigned dispatcher or assistant chief dispatcher available on rest **day**...."

CLAIM #10 - Carrier file 34-160-40-10

(a) "...**present** arrangement of rest days and assignments on dispatchers' positions known as DS 1-2, DS 3, and DS 4-KI is in violation of the Agreement between the AT&SF Railway Co. and the American Train Dispatchers Association, specifically Article IV Section 4, with Section 2 of Article V defining continuous cycle positions pertinent thereto. The violation occurs each Saturday and Sunday on first and second trick when **two** dispatchers are scheduled to handle the territories assigned on a continuous cycle basis 5 days per **week** to three dispatchers. Instead of providing the required rest day relief dispatching positions, the territory of DS 4-KI is divided, being placed with DS 3 and DS 1-2 respectively. This accomplishes Saturday and Sunday rest days for first and second trick DS 4-KI without the **assignment** of a relief dispatcher....

1b) We are therefore making a claim for and you will pay to the oldest unassigned train dispatcher available on each first and second trick of each of the Saturdays and Sundays listed below, one day at dispatcher's rate because of this consolidation of three dispatching positions into two for rest day purposes. On any such trick that there were no unassigned dispatchers available, the oldest available assigned dispatcher or assistant chief dispatcher on rest day will be paid one and one-half the regular train dispatcher's rate instead. Days for which this compensation is claimed are as follows:

<u>First Trick</u>	<u>Second Trick</u>
Saturday, Jan. 6, 1979	Saturday, Jan. 6, 1979
Sunday, Jan. 7, 1979	Sunday, Jan. 7, 1979
Saturday, Jan. 13, 1979	Saturday, Jan. 13, 1979
Sunday, Jan. 14, 1979	Sunday, Jan. 14 , 1979
Saturday, Jan. 20, 1979	Saturday, Jan. 20, 1979
Sunday, Jan. 21, 1979	Sunday, Jan. 21, 1979
Saturday, Jan. 27, 1979	Saturday, Jan. 27, 1979
Sunday, Jan. 28, 1979	Sunday, Jan. 28, 1979

(c) Furthermore, because the consolidation for rest day purposes referred to above constitute 4 days work per ^{week}, and Section 6 of Article IV stipulates that such requirements will be arranged in a relief assignment and 'other service will be provided to give them 5 days' **work** each week', an additional day at dispatcher's rate is claimed for each Thursday (Jan. 4, 11, 18, and 25, 1979) preceding weekends of consolidation. This likewise will be paid to the oldest unassigned train dispatcher available, and if none were available, time and one-half will be paid to the oldest assigned dispatcher or assistant chief dispatcher available on rest day...."

OPINION OF BOARD: The Carrier maintained Dispatcher positions at Winslow, Arizona in order to handle traffic on the five (5) Districts of the Albuquerque Division. Prior to the date of any event at issue, the dispatching of the First, Second, and Fourth Districts was assigned by the Carrier to one Dispatcher position and the Third and Kingman Districts to a second position, each of which was manned continuously, seven (7) days per week. Several years prior to 1978, the Carrier's dispatching load on the third shift increased as a result of slow orders and lineups and it was separated, so that the Fourth and **Kingmen** Divisions were assigned to a third Dispatcher on that shift. Several years thereafter, the First shift was also separated for 5 days a week and a third position established on that shift. In September of 1977, because of Maintenance of Way restrictions, the Second shift was also separated five (5) days a week and assigned to a third Dispatcher on that shift.

Thus, for five (5) days each week, the assignments on and after September of 1977 were:

Desk No. 1 (DS 1-2) First and Second Dist.
Desk No. 2 (DS 3) Third and Fourth (part) Dist.
Desk No. 3 (DS **4-KI**) Fourth (part) and Kingman Dist.

Each Desk was manned around the clock in three shifts for five (5) days each week. On Saturdays and Sundays, the Carrier divided the territories of Desk No. 3 during the first and second shifts and assigned parts of the duties to Desk No. 1 and Wsk No. 2. As a result of the Carrier's action, there were four fewer shifts of Dispatcher work per week available at the Kingman Office than would have been the case had the three Dispatcher positions been manned continuously for seven (7) days each week.

By letter to the Carrier dated October 22, 1977, the Organization complained that the Carrier's failure to man the three Dispatcher **Desks** continuously for seven (7) days each week violated the applicable Agreements between them. Discussions occurred between the parties on the property, but they were unsuccessful. Thereafter, on May 15, 1978, the Organization filed its initial claim with the Carrier. The other nine (9) claims followed. The parties were unsuccessful in resolving the claims on the property, despite protracted discussion, and, in August of 1983, the Organization gave notice of its intent to bring the claims to this Board.

The parties are bound by the Train Dispatchers' Five Day Week Agreement of March 25, 1949, as amended, which was negotiated nationally (the "**National Agreement**") and by an Agreement negotiated directly between them (the "Parties' Agreement"). The Organization contends that the applicable Agreements require that each continuous cycle Train Dispatcher position must be maintained and manned seven (7) days each week. A continuous cycle position is one consisting of:

"...**three (3)** assignments, each of eight (8) consecutive hours, **cover[ing]** a **24-hour** period in consecutive order."
(Parties' Agreement, Article V, Section 2, referenced by Article IV, Section 4)"

Under the applicable Agreements, a position which is continuous for five (5) days must be filled for seven (7) days. Article IV, Section 4 of the parties' Agreement states that:

"The combining of territory, duties, or responsibilities
[of continuous cycle positions] for rest day relief purposes
will not be permitted..."

There is an exception to the cited Rule for non-continuous cycle positions which have been created for the purpose of assisting in handling peak loads. Such positions may be combined with continuous cycle positions for rest day purposes. The Organization argues, however, that both conditions (non-continuous cycle **and** peak load purpose) must be met in order to allow the combining of positions for rest day purposes. Since the third Dispatcher position was a continuous cycle position, the Organization asserts that both conditions have not been met and, therefore, claims entitlement to pay for its members for lost work opportunities.

The Carrier asserts, as an initial matter, that the Organization's claims are time-barred because they were not made within 60 days from the date of the Carrier's September, 1977, action. Because of the delays in processing the claim and bringing it before the Board, the Carrier also argues that the Organization is equitably estopped from bringing its claim and is guilty of **laches**. The Carrier asserts in addition that the claims are defective because they do not identify named Claimants and because the Organization had allowed several similar situations to occur in the past without complaining of a violation of the Agreement.

With respect to the merits of the claim, the Carrier asserts, in the first instance, that it is not required under the Agreement to man the Dispatcher positions continuously, seven (7) days a week. It asserts further that the third Desk position in question was not a continuous cycle position, but was, instead, added on a five day a week basis for the sole purpose of accommodating increased traffic resulting from heavy track maintenance and slow orders, a situation analogous to peak loads, and that the workload was greatly reduced on weekends. It asserts, therefore, that the third Dispatcher position falls within the exception to the Rule.

The Board is not persuaded by the Carrier's argument with respect to timeliness. The **60-day** period in Article VII, Section 9-a of the Parties' Agreement, which is cited by the Carrier to support its position that claims filed thereafter are extinguished, is not applicable to time claims, such as are asserted here. That Article and Section provides a different procedure for time claims. There is in the time claim procedure, to be sure, a **60-day** cutoff under the Parties' Agreement for back pay on such claims, but the right to make the claim is not itself extinguished by the passage of 60 days. Thus, the Organization may recover back pay no further than 60 days prior to the filing of each of its claims, that is, no further than March 15, 1978, in its first claim.

The Carrier cites several cases standing for the proposition that there is no precedent under the applicable Agreements for the filing of a continuous claim and that the initial claim in a continuing violation must nevertheless be timely, else all claims thereafter are also defective. The Board concludes that the cases cited are not controlling, since the Organization does not rely primarily on the continuing nature of the Carrier's alleged violation in order to support its position that the claims are timely, and the Board does not reach the question of whether the initial claim in a continuing violation must be timely filed.

The Carrier's challenge to the claims based on the Organization's failure to name Claimants must also fail. Board precedent is satisfied if the identities of Claimants are ascertainable. It is not required that they be named. See, e.g., Third Division Awards 21432, 23062, 23458. Indeed, the scheduling and payroll records which would be necessary to name the **employees** who would receive the pay claimed for lost work opportunities are in the possession of the Carrier. The Carrier does not assert that it would be impossible to identify the individual beneficiaries of the claims.

The Carrier also asserts that the Organization is aware of other situations in which the Carrier operated inconsistently with the Organization's present position, including the Carrier's earlier actions adding a third position on the first and third shifts at the Winslow Office. The Organization denies the applicability of the earlier/other practices to the Carrier's September, 1977, action. There is no persuasive evidence in the record to support the Carrier's assertions that the other situations parallel the instant claims.

The Carrier's reliance on its prior actions at Winslow to demonstrate the Organization's inconsistent position misses the point of the claims. It was only when the Carrier's addition of a third Dispatcher position on the different shifts created a continuous cycle through the last of its three actions that the Organization asserts that the Carrier violated the Agreements. Since the burden of demonstrating past practice is on the party making the assertion, and since the Carrier here has not met its burden, the Board draws no conclusion based on the claimed past positions of the parties.

The Board concludes that neither equitable **estoppel** nor **laches** bar the Organization's claims. The Organization neither made assertions inconsistent with its present position nor slept on its rights. There was, to be sure, some delay in bringing a claim, but the result of that delay, during which the Organization had notified the Carrier of its position and was attempting to settle the matter through negotiation, was to cut off the Carrier's back pay liability for periods more than 60 days prior to the filing of the claims. It is true that the claims have suffered a long period of processing to reach the Board and at the Board, but there is no indication that the delays were inconsistent with Board procedures. Under the circumstances, it would not be equitable to accept the Carrier's equitable defenses to bar the claims.

The Board concludes that the claims are properly before it and turns **now** to an analysis of their merits.

The National Agreement requires that continuous cycle Train Dispatcher positions be seven (7) day positions. The term "continuous cycle" has the meaning described above. Under that Agreement, each Dispatcher's service consists of five (5) days of duty in his assignment, followed by two (2) consecutive days off. During the regularly assigned Dispatcher's days off, the continuous cycle assignment must be filled and cannot be blanked by the Carrier, even if the workload is lower during the relief days. See Third Division Awards 6886 ("**...the question...is, can Carrier arbitrarily blank such positions on the two rest days...[the agreement] prohibits the use of regularly assigned train dispatcher on his rest days... a regular position must be filled seven days per week.**"), 8019, 8910, 11778. In Award 11778 the Board, applying a rule substantially identical to that here at issue but without the non-continuous cycle/peak load exception, held:

"...the Agreement provides that each regularly assigned train dispatcher will be required to take two regular days off per week as rest **days...for** the purpose of relief assignments each train dispatcher's position is considered as containing a relief requirement without regard to any other considerations including needs for the service. Relief requirements depend solely upon the number of train dispatcher positions. . . .the Carrier in unilaterally blanking the position of the regularly assigned third train dispatcher on a rest day and thus depriving Claimant of a relief **assignment...violated** the Agreement."

The Organization argues that when the Carrier inserted a third Dispatcher, on the second shift at Winslow on a five (5) day per week basis, that position became a continuous cycle position which required seven (7) day coverage. That requirement precluded the Carrier from blanking the position or combining its duties with other positions on weekends. The Carrier asserts, by contrast, that the third Dispatcher position's territory was not combined on weekends; but, rather, the two Dispatcher positions which existed were split out and parts of the territories of those positions were assigned to a third Dispatcher for a limited purpose and time period for five days each week. The argument between the parties in this regard is akin to asserting, in the alternative, that a glass is 5/7ths full or 2/7ths empty. The fact that both alternatives may be correct is not dispositive of either argument.

What is dispositive is how the applicable Agreements treat such a situation. The Parties' Agreement provides that the duties of a continuous cycle position may not be combined for relief day purposes. The third Dispatcher position at Winslow met that definition as of September 11, 1977. There is no requirement under the Parties' Agreement that, in order to be within the definition of continuous cycle, the position exist or be required by the workload for seven days per week. There is no requirement that the position be permanent.

The Board is unconvinced by the Carrier's assertions that the language of the Agreements does not require filling continuous cycle positions on a seven (7) day basis. If the Board were to accept the Carrier's position, the detailed provisions of the Agreement dealing with relief positions would be rendered surplusage. This the Board is unwilling to do.

The Board concludes that, by its action in September of 1977, the Carrier made the third Dispatcher position at Winslow a continuous cycle position. The single exception to the prohibition on combining positions applies only to non-continuous cycle positions. It is not applicable here. The Board holds, therefore, that the Carrier violated the Agreement when it failed to fill the third continuous cycle Dispatcher position on the sixth and seventh day of the week during the periods covered by the claims. The Carrier is required to pay compensation in accordance with the claims for the shifts not filled.

Having found that the Carrier was obligated to fill the position on the four (4) weekend shifts through the use of a relief Dispatcher, the Board concludes further that a make-whole remedy requires that the relief Dispatcher receive in addition a fifth day of work for each week in which the work of the third position was improperly combined. That is consistent with the requirements of Article IV, Section 6 of the Parties' Agreement. Such payment is to be at the straight time rate if there was an unassigned Dispatcher available, and at time and one half if the fifth day would have been worked by a Dispatcher on a rest day. The procedure required by this and the foregoing paragraphs are consistent with the contractual requirement and, contrary to the Carrier's assertions, does not constitute a punitive payment. The claims must, therefore, be, and they **are**, 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 **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

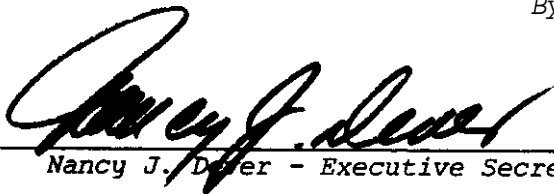
That the claims should be sustained in accordance with the Opinion.

A W A R D

Claims sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.