

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association for and in behalf of F. A. Bookstaver that:

(a) The Erie Railroad Company acted contrary to the meaning and intent of Paragraph (c) of Article 4 of the currently effective Agreement governing hours of service and working conditions, between itself and train dispatchers represented by the American Train Dispatchers Association, by failure to compensate Train Dispatcher F. A. Bookstaver for loss of time account of the Hours of Service Law when, on Friday, November 23, 1951, he was required by carrier to perform service which deprived him of the opportunity to perform train dispatching service on a position to which he had been assigned in accordance with Paragraph (k) of said Agreement.

(b) The Erie Railroad Company shall now be required to compensate Train Dispatcher F. A. Bookstaver in the amount of one day's pay at the trick train dispatchers' rate for the hours 11:00 P. M., November 23, 1951, and 7:00 A. M., November 24, 1951.

EMPLOYEES' STATEMENT OF FACTS: An Agreement governing hours of service and working conditions between the Erie Railroad Company and their train dispatchers represented by the American Train Dispatchers Association, effective April 8, 1942, amended March 4, 1944, February 4, 1947 and September 1, 1949, is controlling in this dispute. Copy of said Agreement is on file with your Honorable Board and, by this reference, is, in its entirety, made a part of this submission the same as though fully incorporated herein. It will hereafter be referred to as the Agreement.

Mr. F. A. Bookstaver, the individual in whose behalf this claim is presented, was, at the time this dispute arose, employed by the Carrier party hereto as a telegrapher and train dispatcher. His service in the latter capacity was performed in Carrier's train dispatching office located at Jersey City, New Jersey.

Some time prior to the time this dispute arose, Mr. Bookstaver had acquired and had been assigned to a train dispatcher position falling within the scope and subject to all the rules of the Agreement, identified as third trick Side Lines. He acquired this position under the provisions of Paragraph

applicant. Obviously he cannot claim that he had any assigned hours. In any event Article 5(k) clearly provides that time lost in transferring to or from a temporary vacancy will not be paid for. There are no exceptions.

The Carrier has been unable to find any awards of this Division that are in point with the particular set of facts and circumstances involved in this dispute, and is, therefore, of the opinion that the decision reached must be grounded on the applicable Agreement when viewed in the light of all of the surrounding facts and circumstances.

The Carrier has shown that there has been no rule violation and that the claimant is not entitled to the compensation claimed under the provisions of the applicable Agreement.

It is therefore submitted that the claim is without merit and should be denied.

All of the information herein has been discussed with or is known to the petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made by F. A. Bookstaver for loss of time for one day as Train Dispatcher, under Articles 4(c) and 5(k) of the current Agreement between the parties. Said claim being denied by Carrier on account of application of the Hours of Service Law.

The employee is a regularly assigned operator at "YA" office, second trick, Jersey City, and held seniority date as Telegrapher as of June 3, 1948, and seniority as Train Dispatcher as of August 6, 1950.

Since August 1950 the employee has held position as Train Dispatcher, assigned to Third Trick Side Line. He had worked the position for five days, November 16 through November 20, 1951, and had requested and Carrier had granted him permission to fill a temporary vacancy beginning 11:00 P.M. November 23, 1951, as Dispatcher on Third Trick Main Line. He had worked the position Third Trick Side Line Friday through Tuesday, with Wednesday and Thursday as rest days. The position of Third Trick Main Line also had the same rest days as the Third Trick Side Line position.

On November 23, 1951 the employee was required by Carrier to fill a position of first trick Telegrapher at Granton Junction Tower, 7:00 A.M. to 3:00 P.M. As a result of working the Telegrapher position Carrier, under the Hours of Service Act, was precluded from allowing employee to work the assignment as Third Trick Main Line Dispatcher, beginning 11:00 P.M. November 23, 1951. Carrier did allow the employee for his compensation for the first trick Telegrapher assignment pay at the one and one-half rate based on Dispatchers' rate of pay.

Claimant contends that due to failure of Carrier to allow him to work the Third Trick Main Line assignment, under Article 4(c) of the Agreement, that he is entitled to pay for one day for such assignment, as provided by the Agreement.

Carrier contends the employee was an extra employee filling temporary vacancies. That because of the Hours of Service Act Carrier was prevented from allowing him to work the assignment, and for the further reason the employee having worked the first trick Telegrapher position, any time he lost would be a result of transferring to or from a temporary vacancy, and under Article 5(k) of the Agreement the employee would not be entitled to pay as claimed. Carrier further contends the employee was an Extra Dispatcher, having been assigned the position on a temporary basis as provided by Article 5 (j) of the Dispatchers' Agreement.

The record clearly shows that employee held a regularly assigned position as operator at "YA" office, second trick, based on seniority held under the Telegraphers' Agreement. The record also shows the employee since August 1950 had held the position of Train Dispatcher, having been assigned by Carrier to Third Trick Side Line position. Nothing in the record indicates this was anything more than a temporary vacancy the employee was filling, since the position had not been bulletined nor had he been awarded the position as provided by Article 5 (j).

It is agreed by the parties the employee had been assigned and had been filling the Third Trick Side Line Dispatcher's position, and had worked on such position November 16 through November 20, 1951. It is further agreed he was assigned to fill vacancy as Third Trick Main Line Dispatcher beginning 11:00 P. M. November 23, 1951, but was unable to fill the vacancy because of the Hours of Service Law, which Carrier would have violated had it permitted him to work the Third Trick Main Line position.

There was no overlapping of time, as Carrier contends. The employee was paid the one and one-half rate for the assignment at Granton Junction at the Dispatcher's rate, for work on his rest day, although he performed a first trick Telegrapher position from 7:00 A. M. to 3:00 P. M. His assignment as Dispatcher, Third Trick Main Line, did not begin until 11:00 P. M. of the same day.

The Board is of the opinion the employee having received the assignment by Carrier did not lose time by reason of Article 5 (k), transferring to or from a temporary vacancy, and this section of the Agreement is not applicable. The claim is based on the simple stated fact that time lost was due to the Hours of Service Act provision as stated in Article 4 (c), and was brought about by Carrier having assigned the employee to work the position of First Trick Telegrapher November 23, 1951. His assignment as Dispatcher, Third Trick Side Line, did not end until he had completed his assigned rest days, November 21 and 22. He already, before the expiration of his rest days, had been assigned his next work day as Dispatcher Third Trick Main Line, but before beginning the assignment Carrier, in an emergency, required him to fill a temporary vacancy as Telegrapher. He had not relinquished the assignment to the Main Line position and he complied with all the requirements of the Carrier.

Article 4 (c) of the Agreement provides—

"Loss of time, on account of the hours of service law or on changing positions by direction of proper authority, shall be paid*."**

We are of the opinion the employee is entitled to be paid as claimed and Carrier has violated the Agreement by its refusal to allow Claimant to work his assignment, for which he is entitled under Article 4 (c). This provision is not ambiguous and is clear that loss of time **shall be paid**, on account of the Hours of Service Law, and is applicable to the situation before us. Agreements are made to be kept by the parties signatory thereto, and we reaffirm the holdings, insofar as they apply to the claim before us, in Awards 2742 and 3097.

Carrier has cited as many awards to bear out their contention. Award 5629 is inapplicable since it is based primarily upon the forty hour week, which does not concern us here, nor do we have the proposition of the status of the employee covered by two Agreements, as affecting the case before us. Award 4795 expresses the opinion of this Board now, the same as at the time it was written. There the Board stated—"The claim is valid if the claimant lost any time to which he had a right under the Agreement." Such holding applies to the instant claim, as provided by Article 4 (c).

The claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

The 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 18th day of September, 1953.