

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY**

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

1. The Delaware, Lackawanna & Western Railroad Company, hereinafter referred to as the Carrier, failed to comply with the requirements of the currently effective Agreement between the parties and specifically the latter portion of Article 3-(a) when, effective January 26, 1952, the Carrier abolished Relief Position No. 3 in its Hoboken, New Jersey office and combined the Boonton Line dispatching territory with the Morristown Line dispatching territory for relief purposes between the hours of 8:00 A. M. Saturdays and 11:59 P. M. Sundays.
2. The Carrier shall restore Relief Position No. 3, and until it is restored the Carrier shall:
 - (a) Compensate the extra train dispatchers who were and are entitled to perform the relief service here in question in amounts representing the difference between what they were and are paid and what they would have been and would be paid for performing the relief service during those periods on the Morristown Line dispatching territory, and
 - (b) In the event no extra train dispatchers were or are available to perform that service, then the regular incumbents of the Morristown Line dispatching territory positions who were and are being relieved for rest days purposes beginning January 26, 1952, and during the hours of 8:00 A. M. Saturdays and 11:59 P. M. Sundays, be paid a day's pay for each of such days.

EMPLOYES' STATEMENT OF FACTS: A Schedule of Rules and Working Conditions for Train Dispatchers effective August 1, 1937, constitutes an agreement between the Delaware, Lackawanna and Western Railroad Company (hereinafter referred to as the Carrier) and its train dispatchers, represented by the American Train Dispatchers Association (hereinafter referred to as the Employees). A copy of this schedule of Rules and Working Conditions for train dispatchers and which, hereafter, will be referred to as the "Agreement" is on file with your Honorable Board and, by this reference is made a part of this submission.

The Organization made no complaint that the consolidation has been a burden or placed additional work on dispatchers, otherwise claims would have been filed under the National Agreement.

The Carrier submits that this claim should be denied. While there is no burden on the Carrier to show that its action is authorized by an agreement rule, Article 5 (i) supports its action in this case.

All data in support of the Carrier's position have been exchanged with the Employees in conference on the property.

(Exhibits not Reproduced.)

OPINION OF BOARD: The claim of the Employees is to the following effect: That the Carrier violated the latter portion of Article 3 (a) when, effective January 26, 1952, the Carrier abolished Relief Position No. 3 in its Hoboken, New Jersey, office and combined the Boonton Line with the Morristown Line dispatching territory for relief purposes between the hours of 8:00 A. M., Saturdays, and 11:59 P. M., Sundays; that as a result of this violation the Carrier be required to restore Relief Position No. 3, and until it is restored compensate the train dispatchers who were entitled to perform relief work the difference between what they have earned and the amount they would have earned had the violation not occurred.

We are primarily concerned with Article 3 (a) of the Supplemental Agreement effective September 1, 1949.

While a certain portion of Article 3 is involved, we set forth a part of Article 3 to obtain the concept of it.

"Article 3 (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. Such assigned 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 any train dispatcher in excess of five (5) days per week.

A regularly assigned train dispatcher required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for services performed on either or both of such rest days.

* * *

The doubling of territory, or absorbing additional duties or responsibilities for relief purposes shall not be permitted except as otherwise agreed.* * *

The underscored portion of Article 3 is pertinent to this dispute.

The Carrier maintains a train dispatching office at Hoboken, N. J., where continuous train dispatching service is maintained 24 hours per day, 7 days per week, on two train dispatching territories known as the Boonton Line and the Morristown Line. Each line is manned by a set of train dispatchers on the First, Second, and Third tricks. There are two assistant chief train dispatcher positions in this office, one assigned on the second trick and the other on the third trick. These train dispatchers are assistant chief train dispatchers are covered by the same agreement and in the same seniority district. All trick train dispatchers do the same type of work.

Effective September 1, 1949, a supplemental agreement known as the Forty-Hour-Week Agreement was put into effect, granting employes a five-day work week with two rest days in each seven. The Carrier at that time established three relief positions, known as Relief Positions No. 1, No. 2, and No. 3. No. 1 relief position afforded relief as follows: Third trick assistant chief dispatcher, Sundays and Mondays. Second trick train dispatcher, Tuesdays Morristown Line. Second trick assistant chief dispatcher Wednesdays and Thursdays. Assigned rest days Friday and Saturday.

No. 2 relief position afforded relief as follows: First trick train dispatcher Saturdays and Sundays, Boonton Line. Assigned rest days Fridays and Saturdays.

On January 17, 1952, the chief dispatcher at Hoboken issued notice of the pending changes to become effective January 26, 1952. As a consequence, the Carrier rearranged its work and assignments which resulted in the abolishment of the No. 3 relief position and combined the Morristown and Boonton Line dispatching territories between 8:00 A. M., Saturdays and 11:59 P. M., Sundays. The Carrier asserts the assignments of relief positions were changed in order to afford the necessary relief of the regularly assigned employes on account of change in rest days.

The Carrier offered evidence in substance as follows: That Hoboken, New Jersey, is the eastern terminus of the Carrier and is located on the west side of the Hudson River, immediately opposite Manhattan Island (New York City). From Monday to Friday it is a busy station into and out of which pour the trains carrying heavy suburban traffic between New York City and towns located on the Carrier's line in eastern New Jersey such as Newark, Orange, East Orange, South Orange, Maplewood, Summit, Morristown, Dover, Mountain Lakes, Paterson, and other towns. A fleet of Carrier's ferryboats ply across the Hudson River between the Hoboken passenger station and New York City. There is also a connection with the Hudson-Manhattan "Tube" trains operating between Hoboken and New York City, and a connecting bus service to mid-town Manhattan. These connections operate on curtailed service on Saturdays and Sundays. A large number of new industries have developed in the above locations, such as branches of large department stores handling every conceivable type of merchandise that formerly could only be obtained in the metropolitan area, also, a great number of industries have adopted the five-day week policy. This change naturally resulted in at least a fifty per cent or more decrease in traffic on Saturdays and Sundays, as fully shown by a check made which appears in the record and need not be set forth. All of this evidence has been considered.

The Employes, in the light of such evidence, make no contention that the single set of train dispatchers handling the combined territories from 8:00 A. M., Saturday to 11:59 P. M., Sunday, are in any sense overburdened with work. We see no necessity for two sets of train dispatchers to perform the necessary service from 8:00 A. M., Saturday to 11:59 P. M., Sundays, during which period the volume of train service has been greatly reduced.

Recognizing that most cases present different factual situations, the awards of both parties to this dispute have been studied, especially so with reference to whether or not the Employes had a valid claim under the evidence adduced.

We believe the following to be pertinent in a determination of this dispute:

Award 5664 of this Division: "SECOND: The Scope rule in this Agreement protects train dispatchers' work and not a particular position or trick at Enid, Oklahoma. Consequently a trick may be abolished, if the work has disappeared. (Awards 439, 3838, 4001, 4099, 4065, 4849, and 5283.)

The work however need not entirely disappear before a position or trick may be properly abolished, provided none of the work is assigned to, or performed by, others not covered by the Agreement" (See Award 5641).

"As we said in Award 439: Neither can the Board agree that under the application of the Agreement between the employees and the Carrier, the duties and work of a classified position must entirely disappear before the regular assignment of a position may be discontinued or abolished, as to do so would soon require all employment on the railroads to be regular full time assignments, would do away with the necessity for or use of extra employees, and would be against the economic operation of the Carriers and opposed to the best interests of the Carriers, the employees, and the public." See, also, Award 6602, adopting a similar principle.

In Award 6184, we said: "The determination of the number of employees needed to perform its work is the function of Management except as it has limited itself by agreement. Under the rules quoted the assignment of relief employees is not a condition precedent to the establishment of seven day positions. Relief assignments are only required to be made when there is work necessary to be done. When all the work can be efficiently performed by staggering of regularly assigned employees, the necessity for relief assignments on rest days does not exist. In other words, Carrier may, in accordance with its operational requirements, stagger the work week assignments of employees regularly assigned to seven day service so that the rest days of some will coincide with the work days of others, and thus make it possible for the regular employee to do all the work necessary to have performed on those days without the necessity of any relief. It should be understood that such employees must be of the same class and within the same seniority district."

The record conclusively discloses the abolishment of the assignments involved was done for the reason that during the hours involved, i.e., 8:00 A. M., Saturdays to 11:59 P. M., Sundays, due to a considerable change in business and the reduction of the number of trains handled, the work load of the dispatchers had decreased to the point that only one set was necessary to efficiently and economically handle the situation.

Based upon an analysis of all evidence, it must be found that the Employees have failed to sustain the burden of proof and therefore the claim is accordingly denied.

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:

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1955.

DISSENT TO AWARD NO. 6839 DOCKET NO. TD 6592

The foundation upon which this Award is based (as expressed in Opinion of Board) is fabricated from a compound of errors through reliance on entirely different, inapplicable and ineffective rules and Awards of the Third Division dealing with interpretation and application of such rules.

The Award completely and erroneously rejects or ignores the clear and unambiguous language of the specific rule upon which the instant dispute turns, as well as Awards of this Division interpreting identical rules where, applied to comparable facts and circumstances, similar argument of Carrier was over-ruled and claim of the employes sustained. This rule is here quoted for ready reference:

"The doubling of territory, or absorbing additional duties or responsibilities for relief purposes shall not be permitted except as otherwise agreed."

First: The majority erroneously rely on Award 5664. Even a casual review of that Award will show the fallacy of that reliance, for the reason that it does not in any way involve a "doubling of territory for relief purposes." In that case a Third Trick Train Dispatcher position was abolished in its entirety, i.e., seven days per week. The claim presented was based on the proposition that employes other than Train Dispatchers were directing the movement of trains during third trick hours. It is significant to note that the denial portion of this Award dealt only with the complete abolishment of the third trick position, and at the same time sustained the claim on days when the movement of trains in the territory was directed by other than Train Dispatchers.

Thus it is clearly evident that Award 5664 does not and cannot possibly have any effect or lend any support to a determination of the dispute presented in this docket.

Second: The majority erroneously rely on Third Division Awards 6602 and 6184. These Awards deal solely with disputes involving interpretation of the so-called National Forty-Hour-Week Agreement executed at Chicago, Illinois on March 19, 1949, effective September 1, 1949, between the Carriers and sixteen cooperating Railway Organizations. The American Train Dispatchers Association was not a party to that Agreement, nor were any of the rules contained therein applicable to employes represented by that Association. Neither did that Agreement contain the rule, supra, upon which the instant claim bottoms. Therefore it is elementary that the Awards cited and relied upon can have no possible effect in support of a proper determination of the dispute before the Board in docket TD 6592. That determination should have been, and must be made, by an analysis and interpretation of the Agreement rule before the Board.

Third: The only reason, or excuse, advanced by the majority for the conclusion reached in denying the claim is stated in the opinion, as follows:

"The record conclusively discloses the **abolishment of the assignments involved** was for the reason that during the hours involved, i.e., 8:00 A. M. Saturdays to 11:59 P. M. Sundays, due to a considerable change in business and the reduction of trains handled, the work load of the dispatchers had decreased to the point that only one set was necessary to efficiently and economically handle the situation." (Emphasis ours)

It must first be observed that the assignments involved were **not** abolished. They remained in effect and were filled by regular assigned Dispatchers five days per week, and on the sixth and seventh days (rest days) were filled by doubling the territory of other Dispatchers, in direct violation

of Article 3 of the Agreement. Such action has consistently been held by the Third Division to be in violation of the rule in previous Awards where the position of the Carrier has been based upon argument exactly similar to the above quoted opinion.

In Award 54, adopted June 25, 1935, the Board rejected a similar plea by the Carrier and sustained the claimed violation of the rule.

In Award 2454, adopted February 4, 1944, the Board rejected a similar contention of Carrier and sustained the claimed violation of an identical rule.

Finally, in Award 5069, adopted October 23, 1950, where the facts, circumstances, rule involved and position of the Carrier were to all purposes identical to the instant dispute, the claimed violation was sustained.

Thus we find, over a period of approximately fifteen years, the Board has held in each such dispute presented that the Carriers involved were in violation of an identical rule in "doubling the territory" of Train Dispatchers "for relief purposes." Yet, in the instant case the majority has elected, upon what has been termed a "philosophical view" of the situation, to completely disregard the clear and unambiguous restriction provided in the rule and the Awards so interpreting that rule.

Therefore, since the Award is based entirely upon inapplicable rules, Awards and improper theories, rather than the clear provisions of the rule and interpretations thereof, it can be of no effect, and for this reason a dissent must be entered.

ROGER SARCHET