Award No. 7403
Docket No. TD-7279

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

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

(a) The Texas & New Orleans Railroad Company, hereinafter referred to as "the Carrier," failed to comply with the requirements of Rule 22 of Article IX of the current Agreement when it refused and continues to refuse to pay Train Dispatcher L. F. McClard, of its Lafayette, Louisiana office, for loss of the opportunity to perform train dispatcher service on the hours of his regular assigned position on Friday, January 1, 1954, due to the fact that he was required by direction of proper authority to fill another assignment not acquired by him through exercise of the seniority provisions of the Agreement and which assignment did not include the hours of his regular assigned position on the day of this claim.

(b) By reason of its action as set forth in the above paragraph (a) of this claim, the Carrier shall now compensate Claimant L. F. McClard for one day's pay at pro rata rate of trick train dispatcher for loss of opportunity to perform service on his regular assigned position, 8:00 A. M. to 4:00 P. M., Friday, January 1, 1954.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement, effective April 16, 1945, between the parties to this dispute. Said Agreement, and subsequent revisions thereof are on file with your Honorable Board and are, by this reference, made a part of this submission as though fully incorporated herein, and will, hereafter, be referred to as "the Agreement."

This claim is based on the provisions of Rule 22 of Article IX of the Agreement, and reads as follows:

"RULE 22—LOSS OF TIME CHANGING POSITIONS:

"Loss of time on account of the hours of service law, or in changing positions, within an office, by the direction of proper authority shall be paid for at the rate of the position for which service was performed immediately prior to such change. Time

work, within the limitations of the Collective Agreement in the interests of efficiency and economy." (Emphasis added.)

CONCLUSION

Carrier has shown that the claim of the instant case is not properly before the Third Division, NRAB, inasmuch as it was not handled on the property as required by agreements and the Railway Labor Act. It was shown by specific references to the past record on this property that the ATDA General Chairman normally discusses disputes and claims with Carrier's Manager of Personnel and then after that makes further attempts to come to a satisfactory settlement locally, neither of which step was followed in the instant case.

Carrier respectfully requests that the Board enter an appropriate ruling acknowledging its lack of jurisdiction in the instant case.

On merits, Carrier has shown that the claim has no support in the agreement but, instead, contravenes the manifested intent of agreement rules and is completely devoid of merit. It should be denied.

All documentary evidence used in Carrier's submission has been, by copy or original, in the possession of authorized Organization representatives prior to time of this submission.

OPINION OF BOARD: The facts which led to this claim are not in dispute. Claimant was a regularly assigned Relief Train Dispatcher, with rest days Wednesday and Thursday. On Friday, January 1, 1954, his regular assignment was 8 A. M. until 4 P. M. on the "MLT District". During the evening of December 31, 1953, the Train Dispatcher assigned to the MLT District from 12:00 Midnight until 8:00 A. M., reported ill. When neither of the extra Dispatchers could be located, Claimant, whose weekly rest day period expired at 12:00 Midnight, was directed to work the 12:00 to 8:00 A. M. position, January 1. He worked as directed and was paid pro rata rate. Because of that service, the Hours of Service Act prevented him from fulfilling his regular assignment on January 1, 8 A. M. to 4 P. M. In consequence he made this claim, citing Rule 22 of the parties' Agreement, which follows:

> "Loss of time on account of the hours of service law, or in changing positions, within an office, by the direction of proper authority shall be paid for at the rate of the position for which service was performed immediately prior to such change. Time lost in the voluntary exercise of seniority rights shall not be paid for."

This claim was denied on the property; and appeal was made to the Board, where the Carrier has contested our jurisdiction. Contending that the matter was not handled "in the usual manner" on the property, in that no conference was held in the final step, the respondent claims that the Board is without jurisdiction, under the Railway Labor Act, to consider the case on its merits.

A careful study of the record leads us to conclude that there was no serious omission in the procedural requirements when this case was handled on the property. The matter was appealed, in writing, to Mr. T. C. Montgomery, Manager of Personnel, March 4, 1954, and denied by him in a letter to the General Chairman, dated March 25, 1954. Neither the Personnel Manager nor the General Chairman requested a conference on the subject. And again, after Mr. E. B. Kysh succeeded Mr. Montgomery as Manager of Personnel, on July 20, 1954, the new Manager, reaffirmed his predecessor's decision by letter. While the record indicates that other matters of this kind have been taken up in oral discussion by the General Chairman and the Manager of Personnel, before being referred to the NRAB, in this instance both men elected to handle the matter by correspondence. Neither saw fit to request a conference. But this is not a procedural defect which should preclude our consideration of the matter on its merits.

Neither the Railway Labor Act nor the procedural instructions given to this Board specifically requires that the final step in handling such claims on the property be taken up in oral conference by the Manager of Personnel and the General Chairman, if they elect to waive the oral discussion, as was done in this instance. Such a conference is necessary only where requested by one of the parties. The one thing necessary for our records is that all claims be put in writing, together with a written response by the proper official authorized to handle such matters. In this instance, the position of the parties is made clear in the exchange of written communications. Obviously, neither the Manager of Personnel nor the General Chairman felt that anything would be gained by further discussion.

If we should dismiss the claim on such a technicality, when the position of the parties is so clearly before us, we should fail in our obligations to the parties and to the public.

As to the merits of the instant claim, this Board has repeatedly held that where an employe has regularly assigned hours and is directed to work a different trick, thus losing his regular assignment because of the limitations of the Hours of Service Law, he is entitled to pay for the hours lost on his regular assignment. Awards 2742; 3097; and 6340. Even though Claimant has lost nothing in the way of compensation, or in number of hours worked, he has suffered a "loss of time on account of the hours of service law . . . in changing positions, . . . by the direction of proper authority . . ." As this language has been previously interpreted and applied by the Board, such claims have been sustained. Awards 2742; 3097.

Carrier contends that an emergency situation existed on the night of December 31, 1953, and that this claim should be denied for such a reason. We do not believe that the inability of the Carrier to reach two extra train dispatchers on New Years' Eve 1953 constituted an emergency such as would warrant the deprivation of Claimant's contractual rights to his assigned hours. These assigned hours were his by virtue of Claimant's seniority status. They may be disregarded by the Carrier in situations involving disaster, acts of God, possible loss or damage to property, and other such emergencies beyond the control of the Carrier. But the absence of two extra train dispatchers on New Years' Eve is not an emergency of such magnitude. The claim is not without merit.

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 Employes involved in this dispute are respectively Carrier and Employes 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 there was a violation of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1956.