

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ERIE RAILROAD COMPANY

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

(a) The Erie Railroad Company, hereinafter referred to as "the Carrier," failed to comply with the requirements of the currently effective Agreement between the parties, particularly Article 3-(a), when it refused and continues to refuse to pay regularly assigned relief Train Dispatcher G. H. Packer, while performing relief service in the position of Chief Train Dispatcher, at the rate of time and one-half for such service performed by him on rest days (February 16, March 2 and 3, 1955) assigned to his regular position.

(b) The Carrier shall now pay to Train Dispatcher Packer the difference between pro rata rate, which he was paid, and time and one-half rate to which he is entitled under the provisions of Article 3-(a), for service performed on February 16, March 2 and 3, 1955, and each subsequent day that he is required to perform such service on rest days assigned to his position.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date of April 8, 1942, and amendments thereto, including revisions effective September 1, 1949 and August 1, 1952. A copy of this Agreement and revisions thereto is on file with your Honorable Board and by this reference is made a part of this submission the same as though fully set out herein.

For ready reference and convenience of the Board the rules most pertinent to this dispute are quoted as follows:

"ARTICLE 1 (a) SCOPE (Effective February 4, 1947).

"The term 'Train Dispatcher' as herein used shall include Chief, Assistant Chief, Trick, Relief, and Extra Train Dispatcher, except one Chief Train Dispatcher in each dispatching office, who will not regularly be required to perform Trick Train Dispatchers' duties.

"(b) DEFINITIONS (Effective February 4, 1947).

"1. Chief Train Dispatcher

Assistant Chief Train Dispatcher.

All data contained herein have been presented to or are known to the Petitioner.

OPINION OF BOARD: There is no dispute between the parties on relevant facts. Claimant was a regularly assigned Relief Train Dispatcher with assigned rest days Wednesday and Thursday. On each of the dates set forth in the claim, which fell on one or the other of the aforesaid rest days, Claimant filled a temporary vacancy as Chief Train Dispatcher, and was compensated for such service at the pro rata rate of the Chief Train Dispatcher position. Claim is made for the difference between the pro-rata and punitive rate, account of such service being performed on the rest days of the Relief Train Dispatcher position, relying on Article 3 (a), the pertinent portion of which reads as follows:

"3 (a). * * * A regularly assigned train dispatcher required to perform service on the rest day assigned to his position will be paid at rate of time and one-half. * * *"

It is asserted by the Organization that this rule is clear and unambiguous, that there is a past practice on this property of paying time and one-half for such service under circumstances present here, and finally that prior awards of this Board sustain the Organization's position.

The Respondent denies that Article 3 (a), quoted above is applicable here, taking the position that the parties negotiated and placed in the effective Agreement a rule, Article 5 (k), to establish the compensation of Train Dispatchers who filled temporary vacancies on such latter position. It was asserted that Article 5 (k) which reads as follows:

"A qualified Train Dispatcher from the Dispatching Office will be used to relieve Chief Train Dispatchers during vacation periods and other temporary vacancies and such Train Dispatchers will be compensated at the straight time rate applicable to the position worked."

is a special Article, specifically limiting compensation to the straight time rate applicable to the position worked, under circumstances here present, and being a special Article, is controlling, as against the provisions of Article 3 (a), a general Article. The Respondent further asserted that Article 5 (k) contained no exception which would justify the application of a punitive rate for the work here performed. In connection with the alleged settlements on the property the Respondent stated that the same were made in error.

The confronting question concerns the proper rate for a regularly assigned Train Dispatcher, who, on his rest days, fills a temporary vacancy on a Chief Train Dispatcher's position, and thereby raises the issue of whether or not Article 3(a) or 5 (k) is controlling. Article 3 (a) in substance establishes rest days for both regularly assigned and extra Train Dispatchers, and further establishes compensation for regularly assigned Dispatchers who perform service on their rest days, as well as compensation for extra Dispatchers who perform work beyond a stated amount, during a specified period.

Claimant here was a regularly assigned Relief Train Dispatcher, so therefore it is with that portion of Article 3 (a) with which we are here concerned. This Board in numerous Awards has interpreted Articles identical with 3(a) holding that:

"* * * a regularly assigned dispatcher is entitled to time and one-half for any work which he may be required to perform for the Carrier on any of the regularly assigned days of rest of his position and that when he works relief for a chief dispatcher on the assigned rest day of his own position he is entitled to such pay. * * *"
Award 4012.

While we think this line of decisions is based on a sound premise, here however, we are confronted with another Article (5 (k)) pertaining to service

performed as a Chief Train Dispatcher which was not present in all of the cases which resulted in decisions of a like nature as that in Award 4012. We cannot agree with the Respondent that Article 5(k) has the effect of a special rule nullifying premium pay for a regularly assigned Relief Train Dispatcher, who, on his rest day, fills a temporary vacancy performing service as a Chief Train Dispatcher. We are of the opinion that Article 5(k) has the effect of placing relief service for the Chief Train Dispatcher within the scope of the Agreement, providing by whom and under what circumstances temporary vacancies in the Chief Train Dispatcher position will be filled; at the same time limiting payment for any service performed as Chief Train Dispatcher to the straight time rate of the Dispatcher position worked. This claim is meritorious.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.