

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

FORT WORTH AND DENVER RAILWAY COMPANY

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

(a) The Fort Worth and Denver Railway Company, hereinafter referred to as "the Carrier," acted contrary to the wording and intent of the rules of the Schedule Agreement between the parties when it improperly established two temporary train dispatcher positions—one effective October 5, 1954, and one effective October 19, 1954, and blanked said positions and combined the work with other dispatching positions for two days each week for relief purposes in violation of Rule 5 (f) of the Agreement, thereby denying claimant train dispatchers the right and opportunity to work on such days, and

(b) The Carrier shall now compensate the train dispatchers listed below in the manner and on the dates set forth herein:

1. C. N. Parker, 1 day at pro rata rate for Saturday, Oct. 9, 1954.
2. J. W. Donahue, 2 days at pro rata rate for Sunday, Oct. 17, 1954.
and Sunday, Oct. 24, 1954.
3. M. A. Davis, 1 day at punitive rate for Monday, Oct. 25, 1954.
4. F. R. Brady, 1 day at punitive rate for Sunday, Nov. 7, 1954.
5. P. R. Armstrong, 1 day at punitive rate for Sunday, Nov. 14, 1954.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the Fort Worth and Denver Railway Company, the Wichita Valley Railway Company and the American Train Dispatchers Association covering hours of service and working conditions governing train dispatchers, effective May 1, 1950, is on file with this Honorable Board and, by this reference, is made a part of this submission as though fully incorporated herein. Said Agreement will hereafter, be referred to as the "Agreement."

Pertinent Sections of rules of the Agreement read as follows:

"Rule 1. Scope. This agreement shall govern the hours of service and working conditions of train dispatchers.

"The Term 'train dispatcher' as herein used shall include all train dispatchers except one Chief Train Dispatcher in each dispatching office.

worked on Saturdays and Sundays and the second such assignment would not be worked on Sundays and Mondays. Certainly there can be no contention of merit that these Amarillo Division dispatching assignments were blanked or combined with other assignments for two days each week for relief purposes when such assignments never existed on such days. The Amarillo Division dispatching assignments were not blanked for two days each week for relief purposes as contemplated by Rule 5(f) but just simply did not exist on those days, and this fact was clearly and definitely made known to the Employees in the notices establishing the positions. The number of train dispatching tricks necessary to move the volume of business is not covered by labor agreements, but is dependent entirely on traffic conditions. Likewise, the number of days an assignment is scheduled to be worked is controlled by service requirements. So long as an assigned employee is provided five days of work each week, there is no further obligation under the rules for additional pay. In Award 6184, with Adolph E. Wenke, Referee, the Board 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."

The petitioner has not and cannot produce a rule that provides for an assignment in excess of 5 days work per week. Rule 5(f) on which the petitioners base their claim for more than 5 days work per week has been interpreted by Third Division Award 5898 previously cited and that interpretation is considered as **final and binding** by the Carrier.

The Saturdays, Sundays and Mondays contended for by the Employees did not belong to and are not due anyone by the very simple reason of not having been a part of the assignments.

The claimants and all others of the train dispatching force were fully cognizant of work assignments of the two Amarillo Division dispatching jobs as Chief Dispatcher's announcements of October 4 and 20, 1954, were positive and explicit that such jobs would not work on Saturdays and Sundays or Sundays and Mondays. It therefore, must be conceded that there was no Saturday, Sunday or Monday work on these assignments available to the Claimants.

The Carrier has positively established that Rule 5(f) has no application whatever in this case for the reason that there could not have been any blanking or combining of positions that never existed. It must follow there can be no justifiable claim for work that does not exist.

This Division's Award 5898 very definitely is controlling in this case and the petitioner is again before this Board in an effort to discredit the final and binding effect of same.

The Assignments here complained of are identical with those contested in Award 5898. The deficiency which prompted a sustaining award in Award 5898 is not in evidence here, as the notices establishing and advertising the assignments contained the clear and unequivocal stipulation that the assignments were either five-day or six-day positions which did not work on certain designated dates.

The Claim is wholly without merit or rule support and should be denied in its entirety. The Carrier affirmatively states that all data herein and herewith submitted have previously been submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Two temporary dispatching positions were established at Wichita Falls to handle Amarillo Division because of recurring seasonal traffic increases. The announcements for

the positions set forth the assignments by scheduled hours. It further stated with respect to the position effective October 5, "This position will not be worked on Saturdays and Sundays," subsequently extended to six days per week, and with respect to the position effective October 20, "This position will not be worked on Sundays and Mondays." Both positions were discontinued on November 26.

It was agreed by the parties in an exchange of correspondence between the vice-president of the Organization and Carrier's Assistant General Manager that in announcing temporary positions under Rule 18:

"* * * the form of the announcement would follow the form of advertisement notice under Rule 17, that is, it would show that it was a temporary position of more than ten days' duration with the days of the assignment and hours of the assignment given as well as the days to be worked and the rest days of the position. * * *"

The employees contend that the announcement should have set forth the rest days of the position, which it did not do, and that relief service should have been provided for those rest days instead of blanking the position and combining the work with another dispatcher position. Rule 5 (a) and (d). That the improper announcement resulted in a violation of Rule 5(f) because there was no negotiation or agreement between designated representatives of the parties.

The Carrier first insists that the "Saturdays and Sundays", as well as the "Sundays and Mondays", never existed on the dates of claim so that obviously they were not blanked or combined within the meaning of Rule 5 (f). Later they admit that the days in question were actually rest days.

We are cognizant of Award 5898 on this property and reject it only insofar as it is contrary to our position here. The instant claim was not one of those held in abeyance pending determination of Docket 5805 which led to Award 5898 nor was the exchange of correspondence herein referred to before the Board in Docket 5805.

There is no evidence of record that traffic density was any different on claim dates than existed during the rest of the week. Rule 5 (a) contemplates "two regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief." It should be noted that the regular force of Chief and Assistant Chief Dispatcher, as well as the three trick dispatchers, were all on seven day a week positions. Whatever additional work, which necessitated the establishment of the two temporary positions, that was performed by the regular force of dispatchers on the claim dates must have resulted in combining positions for relief purposes, admittedly without negotiation and agreement, in violation of Rule 5 (f). This indicates a sustaining award.

There remains to consider the penalty appropriate to Carrier's violation. We adhere to the principle established by prior decisions of this Board relative to cases involving this question and hold that Claimants should receive pro rata rather than time and one-half pay for the days requested.

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 failed to comply with the requirements of the Agreement.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May, 1958.