Award No. 9083
Docket No. TD-8777

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 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, Section (a), when it refused and continues to refuse to pay regularly assigned relief Train Dispatcher F. O. Reynolds, while performing relief service on the position of second trick Assistant Chief Train Dispatcher, at the rate of time and one-half for such service performed by him on rest days (July 21 and 22, 1955) assigned to his regular position.

(b) The Carrier shall now pay to Train Dispatcher Reynolds 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, Section (a), for service performed on July 21 and 22, 1955.

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 are 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

to assume the rest days of the temporary vacancy. Except at Buffalo, New York and Youngstown, Ohio, it has not been the practice to allow an employe to first take the rest days of his regular assignment and thereafter assume the rest days of the temporary vacancy. Thus, Petitioner's argument is not supported by the rules agreement, by awards of the National Railroad Adjustment Board, or by past practice on the property.

In light of the foregoing facts as set forth, the Carrier is at a loss to understand how Petitioner can possibly assume the position it has in this dispute. This is especially true since Petitioner admits, "we have a rule that states that a regularly assigned train dispatcher moving to a temporary vacancy will assume the rest days of the vacancy." See Carrier's Exhibit "B." Petitioner admits "we have a rule," yet, it does an about face and takes a claim to this Board asking for a decision which would be in direct conflict with the rule the parties to the agreement now have. What then is the effect of Petitioner's claim? Is it a request for an interpretation of a rule? Obviously not because the parties have already interpreted the agreement as evidenced by their past conduct not inconsistent with the agreement itself. Thus, from the claim as asserted, it seems clear that Petitioner is, under guise of this claim, asking the Board to write a new rule for the parties, or to abrogate a rule which has historically been complied with by the parties to the agreement. The Board, of course, lacks the power to write new rules for the parties.

Based upon the facts as set forth herein, the Carrier submits that the claim is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Claim herein is for the difference in pay between pro rata rate and time and one half on July 21 and 22, 1955. It is alleged the employe was directed by Carrier to perform vacation relief service, on the dates involved, as Assistant Chief Train Dispatcher. The employe held a regular assignment as relief Train Dispatcher, Saturday through Wednesday, with rest days Thursday and Friday. Account of Carrier requiring the employe to work a relief assignment having rest days different from his assigned rest days, claim is here made on the premise that the employe was required to work another assignment on his regular rest days, and should be paid at the time and one half rate.

The record shows that the employe performed service on his regular assignment July 16 through July 19, 1955, that on July 20, he was required by Carrier to perform service on a temporary vacation position not his own assignment. He worked this latter position, which carried rest days of Monday and Tuesday, or in other words worked nine consecutive days without relief, from July 16 through July 24. Actually he worked July 16, 17, 18, 19, 20, 21, 22, 23 and 24. The rest days of his regular assignment were Thursday and Friday, July 20 and 21, for which days this claim is premised.

Carrier contends during the nine-day period described above the employe worked four days consecutively on his regular assignment then performed service on a wholly differentt assignment beginning July 20, and performed service on such assignment, with hours of service, rate of pay and rest days assigned to such position, and remained on such position for

a period of three weeks. It will be noted the employe worked on four days of his regular assignment, therefore he had not worked five consecutive days on his assignment, and was off the rest days of the new assignment which work week began July 20, the day he entered the assignment. Carrier denies it in any way has violated the provisions of the Agreement, as alleged, and argues that under the provision of Article 5, Section (k) as amended by Agreement between the parties, effective August 1, 1952, it was in no way prohibited from removing the employe from his regular assignment to the relief assignment complained of. He had worked only four days on his regular assignment, when he assumed the relief position. When he began work July 20, on the new assignment, he therefore was required to accept the rest days of the new assignment. We conclude the rest days for which claim is made, cannot be here considered as rest days of his regular assignment, but are work days of the temporary assignment on which the Claimant here was working.

We can find no provision in the Agreement between the parties nor the Amended Agreement effective August 1, 1952, to support the allegations of the claim before us.

This case is disposed of on the basis of the facts herein presented and directs itself only to the question of rest day service under the facts disclosed. The Award goes to no other issues nor is it directed to the meaning and effect of other Agreement rules.

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

That the parties waived hearing on this dispute;

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 Carrier did not violate the provisions of the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1959.