Award No. 10190
Docket No. TD-10817

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

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

(a) The Chicago, Burlington and Quincy Railroad Company, hereinafter called "the Carrier," violated the provisions of Article IV, Rule 20 (f), of the Agreement between the parties when it blanked the LaCrosse Division train dispatching assignment, assigned hours 8:00 A. M. to 4:00 P. M. Central Daylight Saving Time, on June 21, 22, 28, 29 and July 5, 6, 12, 13, 19, 20, 26, and 27, 1958, and combined the duties thereof with the work of the Savanna Line train dispatching position for relief purposes; thereby denying the individual claimant named herein of his contractual right to perform train dispatching service on the aforesaid dates.

(b) That on the dates named in Paragraph (a) of this claim, there were no qualified relief or extra train dispatchers available in the Aurora, Illinois train dispatching office to perform the service in question, by reason of which the regularly assigned incumbent of the La Crosse Division train dispatching position, i.e., Train Dispatcher G. H. Chambers was contractually entitled to perform the service herein referred to.

(c) That the Carrier shall now be required to compensate Train Dispatcher G. H. Chambers at time and one-half rate for each of the dates specified in Paragraph (a) of this claim.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, effective May 1, 1958, on file with your Honorable Board and by this reference is made a part of this submission as though it were fully set out herein.

Article IV, Rule 20 which is particularly pertinent to this dispute, is quoted here for ready reference:

ARTICLE IV

"RULE 20, REST DAYS. (a) Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly

The Carrier relied upon Third Division Award 8224 in the handling of this case on the property. That award involved a dispute between the Pennsylvania Railroad and the Clerks' Organization, over the regulation of extra lists for mail and baggage handlers at the Harrisburg, Pennsylvania passenger station. The basic schedule agreement called for another agreement between the Management and Division Chairman on the number of extra employes to be used. During the Christmas rush of mail in 1953, the Division Chairman of the Organization refused to agree to an increase in the number of extra employes. A number of outsiders were hired to do this work as temporary employes during the rush period, and claims on behalf of the regular employes were progressed to the Third Division. The Board held —

Third Division Award 8224, BRC v. PRR. Ref. H. A. Johnson

'Under the circumstances, the Carrier's unilateral action was necessitated by the Employes' refusal to comply with Extra List Agreement No. 2. Thus the latter are in no position to complain, or to seek even a reasonable penalty."

The same principles are true here. The Carrier's unilateral action in consolidating the LaCrosse Division position with the Savanna Line was caused by the Organization's refusal to comply with the agreement of December 26, 1956 (Carrier's Exhibit No. 2), when the facts clearly justified the consolidation of positions. The Employes cannot successfully complain in these circumstances.

In summary, the Carrier asserts that its action effective June 21, 1958, combining these positions on Saturdays and Sundays, cannot be construed as an agreement violation. Rule 20 (f) is not an absolute prohibition against combining positions for relief purposes. This rule contemplates that agreements will be made in certain circumstances, permitting the type of consolidation involved in this docket. The agreement of December 26, 1956 (Carrier's Exhibit No. 2) contemplated that an agreement would be made between the parties on the LaCrosse Division position, when the work was insufficient to warrant continuing working it seven days a week. With the facts as they now exist, and with the present amount of work on Saturdays and Sundays, this combination of positions was not made in violation of contract.

In view of the above and foregoing, this claim must be denied.

* * *

All data herein and herewith submitted have been previously submitted to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: In December 1956, the Carrier and the Organization consummated the following letter Agreement:

"December 26, 1956 Dispatchers

Mr. A. J. Boyle
General Chairman, ATDA
Aurora, Illinois

Dear Sir:

With reference to our agreement of even date concerning the allocation and seniority of train dispatchers involved in the consolidation of the dispatching offices at North LaCrosse and Aurora.

It was understood that if there is not sufficient work for the LaCrosse Division dispatcher position, which will be established in the consolidated office at Aurora, to warrant continuing it on a seven-day basis, the parties will meet and agree on combining this position with another for relief purposes as contemplated by Rule 18 (c).

It was further understood that there are no objections to the operation of the CTC machine at North LaCrosse by employes of another craft, inasmuch as Aurora Division train dispatchers will be responsible for the movement of trains in the territory covered by this machine.

Please indicate your concurrence with the foregoing by affixing your signature in the space provided below.

Yours truly,

J. E. Wolfe

C

ACCEPTED:

/s/ A. J. Boyle
General Chairman, ATDA

/s/ R. G. Buckingham
Vice President, ATDA"

Rule 18 (c) referred to above was contained in the Agreement effective March 1, 1943. The letter Agreement — which was superseded by the Agreement effective May 1, 1958 — contains Rule 20 (f) which is identical with Rule 18 (c).

On June 21, 1958, the first trick LaCrosse Division Train Dispatcher's position was made a five day job, and one dispatcher was assigned to handle the combined territory from Savanna, Illinois to Newport, Minnesota, on Saturdays and Sundays.

The first shift LaCrosse Dispatcher's position had been on a seven days a week basis. On May 2, 1958, Mr. J. E. Wolfe, Carrier's Vice President-Personnel, in a letter to the Organization's General Chairman, Mr. A. J. Boyle, provided the latter with work survey data to show the decline in Saturday and Sunday traffic and recommended that the first trick dispatcher's job be discontinued as a seven days week operation. The Carrier stated in part in its letter that "To fulfill our commitments, I am enclosing herewith several copies of a proposed agreement under Rule 20 (f) of the schedule effective May 1, 1958. Will you please have the Office Chairman at Aurora execute this agreement promptly so that it may become effective on May 6, 1958. Superintendent Stoll at Aurora will also please sign it, as well as yourself as General Chairman."

The proposed agreement reads as follows:

"Aurora, Illinois
May 2, 1958

"MEMORANDUM OF UNDERSTANDING

In accordance with Rule 20 (f) of the schedule agreement effective May 1, 1958, the following arrangement of forces at Aurora, Illinois is hereby agreed to:

On Saturdays and Sundays, the LaCrosse Division position may be combined with other trick train dispatcher positions to effect a weekly rest day for these positions.

This agreement is to become effective May 16, 1958, and is subject to cancellation or revision in the manner prescribed by Section 6 of the amended Railway Labor Act.

Office Chairman, A.T.D.A. Superintendent, Aurora Division

APPROVED:

General Chairman, A.T.D.A. Vice President-Personnel"

The General Chairman on May 12, 1958, returned unsigned the Memorandum of Understanding ". . . in order that we may comply with that part of the Agreement reading:

'The parties will meet and agree on combining this position with another for relief purposes as contemplated by Rule 18 (c).'

'It was our understanding at the time this agreement was made and still is, that we would meet and agree before any combinations were made for relief purposes."

On May 28, 1958, the parties met but failed to reach an agreement. On June 9, 1958, Mr. Wolfe sent Mr. Boyle additional work survey data and informed him that the first trick LaCrosse dispatcher's job would be reduced to five days a week. A pertinent part of Mr. Wolfe's letter reads as follows:

"We do not believe your refusal to sign the agreement contemplated by the second paragraph of the agreement of December 26, 1956 can prevent this consolidation."

It cannot be doubted or successfully refuted that the controlling provision in this case is Rule 20 (f) of the May 1, 1958 Agreement. The latter Agreement, of course, controls and supersedes the December 1956 Letter Agreement.

The record indicates that the Carrier's "Memorandum of Understanding" was made under the provision of Rule 20 (f) and represented nothing more than a proposed agreement. Therefore, the Carrier may not now successfully contend that the Letter Agreement of December, 1956, is controlling.

The simple and clear language of Rule 20 (f) reads as follows:

"The combining or blanking of positions to avoid using relief or extra dispatchers to provide relief on rest days for established positions will not be permitted except by agreement between the superintendent and office chairman, subject to approval of management and the general chairman."

The above Rule unmistakably provides that the combining or blanking of relief or extra dispatchers' positions can only be done by the agreement of the parties. It is also to be noted that the Letter Agreement of December 1956, did not impose on either or both parties the obligation to agree . . . that Agreement simply stated that ". . . the parties will meet and agree . . ."

In Award No. 5653 (Wenke) the Board held:

"It should be borne in mind that Carrier is obligated to do what, by its Agreements, it has contracted to do, although that may not always be the easiest or most economical manner of doing it."

The record reveals that the Carrier took unilateral action when it combined the Saturday and Sunday duties of an established dispatcher's position with the duties of another dispatcher's position. Such action, constituted a violation of Rule 20 (f) of the controlling Agreement. Accordingly, we hold that the Carrier violated the Agreement.

The Claimant, however, is entitled only to straight time pay for the dates specified in the Statement of Claim.

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

That the parties waived oral hearing;

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 the Carrier violated the Agreement.

AWARD

Claim sustained at straight time rate on specified dates.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1961.

DISSENT TO AWARD NUMBER 10190, DOCKET NUMBER TD-10817

Following quotation of the letter Agreement, dated December 26, 1956, in the Opinion of Board, the majority stated:—

> "The letter Agreement — which was superseded by the Agreement effective May 1, 1958 — contains Rule 20 (f) which is identical with Rule 18 (c)."

Actually, the letter Agreement supplemented the primary rules Agreement. Rules 20 (f) was not contained in the letter Agreement as indicated; on the contrary, it was contained in the revised primary rules Agreement effective May 1, 1958.

The special letter Agreement of December 26, 1956 stipulated conditions in respect of the one particular position involved here to facilitate the purposes of Rule 18 (c), now Rule 20 (f), in treating with that position. It provided that "* * * if there is not sufficient work for the LaCrosse Division dispatcher position, * * * to warrant continuing it on a seven-day basis," then the parties would agree on combining positions as contemplated by the rule. This shows that combining was to be determined by a fact situation, not the whim of the parties. It did not conflict with the Agreement of May 1, 1958 and inasmuch as the latter Agreement expressly superseded only the previous Agreements, understandings, interpretations and rulings in conflict therewith, the letter Agreement was not superseded.

Award 10190, therefore, is in error, first, because the finding that the letter Agreement of December 26, 1956 was superseded lacks support and, second, because the majority went outside the record to make such finding, as the record shows no such question handled on the property nor presented to the Board in the submissions of the parties.

Furthermore, the finding:—

> "* * * that the Letter Agreement of December 1956 did not impose on either or both parties the obligation to agree . . . that Agreement simply stated that '. . . the parties will meet and agree . . .' "

is erroneous in that it assumes that the parties performed a useless act in making the Agreement. Such finding conflicts with our oft repeated finding that the Agreement of the parties is sacrosanct; that the meaning of a written Agreement must be gathered from the language used and that effect should be given to the entire language.

For the foregoing reasons, among others, Award 10190 is grossly wrong and we dissent.

/s/ J. F. Mullen

/e/ P. C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ D. S. Dugan

LABOR MEMBER'S ANSWER
TO
CARRIER MEMBERS' DISSENT
TO
AWARD 10190—DOCKET TD 10817

In the first paragraph following the quote the dissenters state:

> "Actually, the letter agreement supplemented the primary rules Agreement. Rule 20 (f) was not contained in the letter agreement as indicated; on the contrary, it was contained in the revised primary rules Agreement effective May 1, 1958."

The Letter Agreement was not supplemental to either Rule 18 (e) of the Agreement effective March 1, 1943, nor Rule 20 (f) of the Agreement effective May 1, 1958. It merely set forth that under certain conditions as outlined in the record, an agreement would be made in conformity with Rule 18 (c).

Rule 35 of the controlling Agreement reads as follows:

> **"This Agreement shall become effective May 1, 1958, and supersedes previous agreements, understandings, interpretations and rulings in conflict therewith * * *."** (Emphasis ours.)

Rule 20 (f) in its entirety reads:

> **"The combining or blanking of positions to avoid using relief or extra dispatchers to provide relief on rest days for established positions will not be permitted except by agreement between the superintendent and office chairman subject to approval of management and general chairman."**

It is clear from the record that the Letter Agreement dated December 26, 1956 has no application, since the Agreement effective May 1, 1958, supra, **superseded all other Agreements.**

The Carrier Members are taking a position contrary to the position taken in the past on the question of whether or not the entire Agreement may be considered, when the following statement in their dissent is analyzed.

> "Award 10190, therefore, is in error, first because the finding that the letter agreement of December 26, 1956 was superseded lacks support and, second, because the majority went outside the record to make such finding, as the record shows no such question handled on the property nor presented to the Board in the submissions of the parties."

The implication here is that the Employes did not advance any argument to the effect that Rule 35 of the May 1, 1958 Agreement was controlling.

In Award 7850 (Referee Lynch) we sustained the claim of the Employes and in the dissent to this Award the Carrier Members stated:

> "* * * this Board must determine rights of the parties from the four corners of the Agreement and that no rule thereof need be

specifically pled at any time to be applicable inasmuch as Agreement rules are always before us."

We do not agree wholeheartedly with this doctrine, simply because this principle, carried to the extreme, would entirely emasculate the intent and purposes as well as the clear and definite language of the Railway Labor Act, as amended, by relieving the contesting parties of their obligations under the Act, as well as exceeding the appellant jurisdiction of the Board deciding disputes, instead of creating them. We hold, however, that only those rules and/or Agreements pertinent to the question placed in issue by the parties on the property are properly before the Board for consideration. (Awards 3502 - 5016 - 5079.)

It is evident that it is the dissenters' desire to apply the above doctrine when it is to their benefit, but to ignore it when it is to the benefit of the employes. In the last paragraph of their dissent they state:

"* * * that the meaning of a written Agreement must be gathered from the language used and that effect should be given to the entire language."

The fallacy of the dissenters' argument is that even if there was a so-called Letter Agreement in effect—which in the light of Rule 35 there was not —Rule 20(f) prohibits the combining of positions for rest day purposes except by Agreement. (Awards 54-2454-5069).

The record, the rules of the Agreement, as well as the Award cited clearly show that Award 10190 properly disposed of the involved issue in sustaining the Employes' claim.

/s/ H. C. Kohler
LABOR MEMBER—
THIRD DIVISION—N R A B