

Award No. 10623

Docket No. TE-9164

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway that:

1. Carrier violates the agreement between the parties when on each Saturday and Sunday, beginning May 22, 1954, it abolished the regularly assigned rest day relief positions on the First and Third shift Hagerstown District dispatcher's positions and combined the work of these positions with that of the First and Third Winston District dispatcher's positions; and, abolished the regularly assigned rest day relief position on the Second Shift Winston District dispatcher's position and combined the work of this position with that of the Second Shift Hagerstown District dispatcher's position.

2. Commencing on September 21, 1955 and continuing thereafter until corrected on each day of the violation Carrier shall:

(a) Compensate the senior idle extra dispatcher entitled to the work for eight (8) hours at the straight time rate of the position upon which work was denied; or

(b) If no extra train dispatcher under the Agreement is available to perform train dispatching service on any day the violation occurs, then the regular occupant of the position on the other five days of the week, eight (8) hours at the time and one-half rate; and

(c) Any other employe under the Agreement, extra in preference, who was denied employment because of Carrier's violative act.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

On the Shenandoah Division of the Carrier, headquarters Roanoke, Virginia, positions established to perform dispatchers' work are:

First shift	Hagerstown District	8:00 A. M. to 4:00 P. M.
Second shift	Hagerstown District	4:00 P. M. to 12:00 midnight
Third shift	Hagerstown District	12:00 midnight to 8:00 A. M.
First shift	Winston District	8:00 A. M. to 4:00 P. M.
Second shift	Winston District	4:00 P. M. to 12:00 midnight
Third shift	Winston District	12:00 midnight to 8:00 A. M.

position must be filled, attention is also invited to Third Division Awards 5545, 5547, 6232, 6602, 6947, 6948, 7073 and 7189.

The specific question of a Carrier using one dispatcher to cover two districts to perform all dispatcher work from 8:00 A. M. on Saturdays to 11:59 P. M. on Sundays during which time the work was light, and using two dispatchers to cover the two districts at other times, was before your Board in Docket No. TD-6592. The Third Division in Award 6839 thereon cited their Awards 6184 and 6602, referred to by the Carrier in the instant case, and stated:

" * * * We see no necessity for two sets of train dispatchers to perform the necessary service from 8:00 A. M. Saturday to 11:59 P. M. Sundays, during which period the volume of train service has been greatly reduced."

See also Third Division Award 7211 similarly holding.

The Carrier asserts that as the dispatchers involved in the instant case are of the same class, perform the same type of work, receive the same rate of pay and are carried on the same seniority roster, it was proper under the Forty Hour Week rules it cites, as interpreted by your Board, to assign the dispatchers on a staggered basis to cover the seven-day operation. The Carrier further asserts that the abolishment of an assigned relief position and the use of one dispatcher to perform all dispatcher work on each trick on Saturdays and Sundays was not a violation of the Agreement as alleged by the Employees.

It is the position of the Carrier the Employees' claim is not supported by any schedule rule, therefore, denial of the claim is respectfully requested.

(Exhibits not reproduced)

OPINION OF BOARD: This claim is identical to the claim in Award 10622. It involves the same parties and issues as submitted.

For the reasons stated in Award 10622 the claim is denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May, 1962.

DISSENT TO AWARDS 10622 AND 10623, DOCKETS TE-9163 AND 9164

Assuming without conceding that all of the so-called 40-hour week provisions of the somewhat obscure agreement involved in these two dockets actually apply to train dispatchers these awards merely compound earlier errors.

These errors arise mainly from the misconceptions that the right to stagger work weeks was something new which was given to the carriers along with the obligation to grant a shorter work week, and that staggered work weeks somehow permit the combining of the work of separate and distinct positions in order to avoid one of the main purposes of the shorter work week: The spreading and maintaining of employment.

For these reasons and those more fully set out in my dissents to Awards 9119, 9574 and 9575, I cannot agree with the present awards and must, therefore, dissent.

J. W. WHITEHOUSE

Labor Member