Award No. 11131
Docket No. TD-12536

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ERIE-LACKAWANNA RAILROAD COMPANY

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

(a) The Erie Railroad Company (predecessor of the Erie-Lackawanna Railroad Company), herein after referred to as "the Carrier) violated the provisions of the effective agreement between the parties, Article 3(c) in particular, when on Friday, December 25, 1959, it blanked the position of trick train dispatcher Side Lines with hours from 3:15 P. M. to 11:15 P. M. in its Hoboken, New Jersey train dispatching office and combined (doubled) the territory with that of the Assistant Chief Train Dispatcher, thereby reducing the force for one day in that office, when there was a train dispatcher available to perform the duties thereof.

(b) By reason of said violation referred to in paragraph (a) above Train Dispatcher F. A. Bookstaver, who was available to perform service on the position of trick train dispatcher Side Lines with hours from 3:15 P. M. to 11:15 P. M. in the Hoboken, New Jersey office on Friday, December 25, 1959, but whom the Carrier failed to use to fill that position, shall now be compensated in accordance with the provisions of Article 3(a) of the effective agreement between the parties for December 25, 1959.

EMPLOYES' STATEMENT OF FACTS: There was in effect on the date of said violation an Agreement, covering the Hours of Service and Working Conditions between Erie Railroad Company and its train dispatchers represented by the American Train Dispatchers Association, effective April 8, 1942 and subsequently amended at various times. A copy of this Agreement and Amendments thereto are on file with your Honorable Board and, by this reference, are made a part of this submission as though fully incorporated herein.

For ready reference of your Honorable Board the provisions of said Agreement particularly 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,

OPINION OF BOARD: On Friday, December 25, 1959, a work day of the assignment, the Carrier blanked the position of second trick train Dispatcher, Side Lines, hours 3:15 P. M. to 11:15 P. M. in order to use him on another position that day. No trains were scheduled over this territory during this period except one passenger train east and west. No stations were open. Such work as was performed was by the Assistant Chief Train Dispatcher. No extra train dispatchers were available, and the claim is on behalf of a train dispatcher who was on a rest day of his current assignment. The issue presented by the claim is whether the Carrier violated the provisions of Rules 3(c) and 7(c) of the Agreement when it did not fill the second trick Side Lines position on Christmas Day.

Article 3(c) reads as follows:

"Doubling Territory

(c) The doubling of Territory for relief purposes will not be permitted except in extreme or unavoidable emergencies."

It is argued by the Organization that this provision of the Agreement applies because the Carrier blanked the second trick position in order to use the occupant thereof on another position it needed to fill because no extra dispatcher was available. The Carrier, on the other hand, argues that Friday, the day in question, was a regular work day of the assignment and Article 3(c) applies only to rest days; that there is no rule in the Agreement prohibiting the Carrier from blanking a position when there is no work to be performed.

A number of prior awards of this Board have been cited by the Organization where the "Doubling" rule, similar in many respects to the rule on this property, was applied. With the exception of two, the awards dealt with blanking positions on the rest day of the assignment. In Award 5016, where the position was blanked on other than a rest day, considerable work remained that has performed by other dispatchers. In Award 6750 the applicable rule read: "Combining or blanking positions for relief purposes". No contention was made that there was no work to be performed on the day the position was blanked. Also the parties were in agreement that when the position blanked was a regularly established dispatcher position the rule in the Agreement precluded the blanking of such position. From these precedents we have concluded that in the absence of a showing that work remained on the blanked position or the rule specifically prohibited blanking a position or the parties by historical practice had otherwise applied the rule, then the "doubling rule" as written in the Agreement now before the Board applied to blanking positions on rest days. No rule in the current Agreement has been cited that precludes blanking a position on a work day of an assignment in exceptional circumstances (i.e., Christmas) when no work remains; and no historical practice prohibiting such has been demonstrated.

It is admitted the work load was light and on the basis of the record can be deemed to be inconsequential.

The Organization also contends that Article 7(c) was violated. This rule reads, in part, as follows:

"(c) . . . five (5) days' advance written notice of intended force reduction will be given by management to the Train dispatchers affected. . . ."

But this rule relates to force reduction, and here there was no force reduction. Every available dispatcher was assigned. On this point we agree with what was said in the Award 10393 (Stark).

From the entire record and for reasons herein above expressed we have concluded that there has been no violation of the Agreement as claimed.

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 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 12th day of February 1963.

LABOR MEMBER'S DISSENT TO AWARD 11131, DOCKET TD 12536

Award 11131 is erroneous and I must register my dissent thereto.

The issue involved in the instant case was simple. The position involved was a regularly assigned position with work days designated as Monday to Friday with rest days of Saturday and Sunday. The position, contracted to the employes in conformity with Article 5(J) of the Agreement was properly bulletined and assigned, and it was carrier's obligation to fill the position on Friday, December 25, 1959. No rule of the Agreement permits the blanking of a position notwithstanding the majority's holding that:

> "No rule in the current Agreement has been cited that precludes blanking a position on a work day of an assignment in exceptional circumstances (i. e. Christmas) when no work remains; . . ."

By no stretch of the imagination could Christmas, or any other holiday for that matter, be considered an "exceptional circumstance" nor is the quoted phrase found in any rule.

Holidays occur each year with regularity and the amount of work to be performed on such days by the occupant of the position does not give the carrier the privilege of either filling it or blanking it without mutual agreement.

It was pointed out that the claimant organization is NOT a party to the 40-Hour Week Agreement, which permits blanking of positions on certain days. In the Train Dispatcher Five-Day Work Week Agreement there is no provision for five or six day work weeks, nor any provision which permits blanking of a position on an assigned work week. As the Referee is well aware this Board has only authority to construe Agreements in the light of the language which they there find. (Awards 10346, 9253, 7343, 5079) And the Referee is well aware of the long established principle that where no exception exists, none can be supplied by this Board. (Awards 10743, 6167, 5464, and 4854)

Nothing in the record casts doubt upon carrier's statement that the volume of dispatching duties on Christmas Day did not justify filling the position in question. However, Awards 5016, 6750, with rules and circumstances similar to those in the instant case held that "doubling of territory for relief purposes" as was done here was a violation of the Agreement.

Further, the Referee must be aware of the well established principle that whether the amount of work be trivial or substantial is no concern of this Board whose only concern is, and must be directed to the question of whether under the facts disclosed by the record and in the light of the clear provision of the applicable rule or rules whether or not the Agreement was violated. And certainly there can no longer be any doubt concerning another principle—namely, that this Board cannot indulge in questions of equity. I cite but six of many Awards going to that point. Awards 3674, 6907, 9193, 10073, 10245 and 10352.

Award 11131 completely and erroneously rejects or ignores the clear and unambiguous provisions of the specific rule upon which the instant dispute turns. Article 3(c) is here quoted for ready reference:

> "The doubling of territory for **relief purposes** will not be permitted except in extreme or unavoidable emergencies."
> (Emphasis added).

Relief purposes as set forth in the above Rule are not confined to "rest day relief purposes" but is applicable to relief purposes for any reason. It is inescapable that had the parties intended the Rule to be confined to rest day relief, it would have been a simple matter to so state and we have no authority to read something into a rule that is not contained therein.

The majority erroneously rely on Award 10393. Even a casual review of that Award will show the fallacy of that reliance for the reason that in that Award the day involved was a "make work" day, and the Agreement covering that position permitted the carrier on such day to use the occupant on any vacant train dispatcher position. In the instant case no such assignment or Agreement was involved.

It seems logical to me that the principle to be applied here was that stated in Award 6750. In that case, with almost identical rules as in the instant case, it was the Petitioner's position that:

> "We submit that position No. 314 left vacant by Train Dispatcher Gipson on March 23, 1953, was a component part of a permanent position, properly identified as "second relief position" when established, applied for and assigned to its regular incumbent. Why Train Dispatcher Gipson was absent is not relevant to the issue to be decided herein.

"Your Honorable Board has rejected Carrier pleadings that it was faced with an emergency as an excuse for violation of a contract obligation. (See Third Division Award 2942).

"The Second relief position which the Carrier blanked on Monday, March 23, 1953, had not been abolished pursuant to the provisions of Article 5 (j) (supra). The absence of the regularly assigned incumbent of the position created a Vacancy defined in Article 5 (b) as an 'extra position' which the Carrier was obligated to fill and was prohibited from blanking under the provisions of Article 3 (f).

"In the instant claim we are faced with consideration of the same principle involved in Third Division Award No. 5016 where, Referee Jay S. Parker sitting as a member, the Opinion said:

> '. . . It cannot, we believe, be seriously questioned that under existing conditions and circumstances the blanking of the involved position, even for one day, amounted to its abolishment for that period of time. This must be true for, carried to the extreme, the repeated and continuous blanking thereof would abolish it just as effectively as formal action.' "

In Award 6750 we held:

"There is little if any controversy respecting the force and effect to be given applicable rules of the Agreement when a regularly assigned dispatcher position is blanked for one day. As we analyze their respective positions the parties agree that if the involved position be assumed to be a regularly established dispatcher position Article 3 (f) precluded the blanking of such a position and an Agreement, dated January 31, 1940, required that a temporary vacancy on such a position be filled by assigning Drake to fill it and permitting Short to work the rest day of his position.

"The trouble here comes from a contention advanced by Carrier that the facts disclose no vacancy on a regularly assigned dispatcher position due to the fact that the Monday relief assignment of Gipson's regular position was what is referred to as a utility assignment, i.e., that in order to comply with the requirements of Article 3 (e) of the Agreement Carrier made work for such position by creating the job of Assistant to the Chief Dispatcher for one day (Monday) of each week only. Based on this premise it is argued there was no position to relieve on Gipson's assignment on the date in question. We believe the fallaciousness of Carrier's position lies in its erroneous conclusion that the pertinent and previously mentioned Articles of the Agreement have application to the positions filled in relief by a regularly established relief position instead of days blanked **on the regularly assigned relief position itself.** Here it is conceded Carrier had made work on Gipson's position when it was established. It is our view that thereafter the work assigned to such position was a part of that regular assignment and the days thereof could no more be blanked than could days of other regularly assigned positions of different character. Here, also, a temporary vacancy existed in Gipson's regularly assigned position by reason of the Carrier's having taken Extra Dispatcher Snively, who was filling it during Gipson's absence on vacation, off such position, thereby blanking it at a time when no one contends the work theretofore

established by the Carrier for Mondays was non-existent and did not remain to be performed. The inescapable result, as we see it, is that Carrier's action as heretofore related resulted in a violation of the Articles of the Agreement to which we have previously referred."

For the foregoing reasons, I dissent.

H. C. Kohler
Labor Member