

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, 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-Lackawanna Railroad Company, hereinafter referred to as "the Carrier", violated the currently effective agreement between the parties to this dispute, specifically Article 3 (c), when by unilateral action pursuant to Superintendent Robisch's notice dated April 4, 1961, it initiated effective May 8, 1961, doubling territory of the two first trick positions (hours 7:45 A.M. to 3:45 P.M.) on the first and Second Sub-Divisions of its Mahoning Division in its Youngstown, Ohio, train dispatching office on Sunday of each week for rest day relief purposes.

(b) The Carrier shall now compensate the senior available extra train dispatcher in its Youngstown train dispatching office a day's pay at pro rata rate of trick train dispatcher for Sunday, May 14, 1961, and each Sunday thereafter until the violation is corrected.

(c) A joint check of the Carrier's time rolls (Pay rolls) shall be made by the Carrier and the General Chairman of the American Train Dispatchers Association to determine those entitled to the payments required by paragraph (b) of this claim.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, 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 3.

"**REST DAYS** (Effective September 1, 1949)

the dispatching work on First and Second District on second and third trick seven days a week is not involved in this dispute.

IV. CONCLUSION

It has heretofore been shown by Carrier that the claim filed by Petitioner for unnamed claimants is not compatible with the dictates of this and other Boards for the reason that such a claim completely lacks in specificity. First Division Award 18849, Third Division Award 6391 and 9848. Based upon the authorities cited, Carrier reiterates that this claim should be dismissed.

Without detraction from or prejudice to this position, Carrier has then shown that Petitioner has not, and cannot, make its case which it is incumbent upon Petitioner to do as the moving party. Recent Third Division Awards 9037, 9211, 9213 and 9552, therefore, dictate a denial award.

With Carrier having all managerial prerogatives not relinquished by agreement rules or restricted by law, Awards 7861, 8026 and 8218, and with it having a definite obligation to its stockholders and the general public to operate its business in the most efficient and economical manner, Awards 8692 and 9047, Carrier submits, and the record so proves, that Carrier was perfectly justified in its action in the instant dispute. It has most definitely been established that operation and dispatching work on the involved division have for the stipulated reasons continually declined. Moreover, to such a point where Carrier found it necessary to have but one dispatcher on first trick on Sunday and but one dispatcher on second and third trick each day of the week. Carrier having the right to determine the number of employees necessary to its continual operation, Awards 8198, 8215 and 8327, and also having the right to abolish positions even though all the work of the position has not completely disappeared, Award 8215, Carrier submits that this position was not, as alleged by Petitioner, combined "for relief purposes." The record firmly establishes that there was absolutely no need for two dispatcher positions on first trick on Sunday and, therefore, instead of Rule 3 (c) supporting the position of Petitioner, the rule without doubt supports Carrier's action in this dispute. This claim has been shown to be met head on by the decision and awards cited in Award 6839 and based upon this and all the facts of record and authorities cited, this claim is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The American Train Dispatchers Association and The Erie-Lackawanna Railroad Company.

The Carrier, prior to May 8, 1961, maintained two sets of regular Train Dispatcher positions assigned on each of three tricks. The dispatching territory of the positions on each set consisted of one of the two Sub-Divisions. All positions were abolished by the Carrier. Carrier notified all concerned that the dispatching territory of the first trick Dispatchers, both regular and relief on Sunday, and the second and third trick Dispatchers each day would consist of the first and second Sub-Divisions.

The Petitioner filed this Claim alleging that the combining of the Sub-Divisions during the first trick on Sundays violated 3 (c) of the Agreement.

"DOUBLING TERRITORY

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

Award 8019 (Cluster) is in point, and controlling, we believe.

For the foregoing reason, we find the Agreement was violated.

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 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 violated.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.