Award No. 11411
Docket No. TD-12809

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
MISSOURI PACIFIC RAILROAD COMPANY

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

(a) The Missouri Pacific Railroad Company, hereinafter referred to as "the Carrier", violated the currently effective agreement between the parties, Article 3(b) specifically, when it declined and continues to decline to regularly assign a relief train dispatcher and compensate him in accordance with the provisions of Article 3(b) in its train dispatching office at Poplar Bluff, Missouri, where relief requirements regularly necessitate four (4) days' relief service per week.

(b) The Carrier shall now compensate Mr. L. R. Pinkley one day's compensation at the rate applicable to trick train dispatcher for each of the following dates: May 9, May 16, May 23, May 30, June 6, June 13, June 20, June 27 and July 4, 1960, on which dates he was deprived of work to which he was contractually entitled under the agreement.

EMPLOYES' STATEMENT OF FACTS: There is in effect an agreement between the parties to this dispute effective August 1, 1945, reprinted March 1, 1955 and subsequently amended. A copy of this agreement and subsequent amendments are on file with your Honorable Board and by this reference are made a part of this submission as though they were fully set out herein.

The agreement rules particularly pertinent to this dispute are quoted here for ready reference.

"Article 1

"(a) Scope

This agreement shall govern the hours of service and working conditions of train dispatchers. The term 'train dispatcher,' as hereinafter used, shall include Assistant Chief, trick, relief and extra train dispatchers. It is agreed that one Chief Dispatcher (now titled Division Trainmaster on this property) in each dispatching office shall be excepted from the scope and provisions of this agreement."

"Article 3

"(a) Rest Days
(Effective September 1, 1949)

which provides for the abrogation of all prior practices (Awards 3338, 2436, 1102) or when the agreement is ambiguous and reasonably susceptible of two interpretations one of which is consistent with the practice (Awards 4366, 3194, 3002, 2466, 2278, 1609, 1178, 945, 213 and 72) or when the agreement is indefinite, * * *. These are not hard-and-fast rules but rather established means of ascertaining the intention of the parties to a contract for the purpose of determining its meaning."

Award No. 5416 — Referee Parker.

"In such a situation (dispute as to agreement coverage) we have repeatedly held intention of the parties, to be determined by recourse to custom, practice and other indicia of their understanding, is the decisive factor.

* * * * *

"The fact, if it is a fact, as the Organization charges, that it did not know of the custom and practice in question affords no sound ground for a contrary conclusion."

Award No. 7955 — Referee Cluster.

"The basic issue is whether it can be said that the scope rule, which does not describe any work but merely lists positions, was intended to cover the kind of work here involved. In order to determine this, it is necessary to look to custom and practice."

We respectfully submit that it has never been the practice on this Carrier to include the filling of temporary vacancies on positions of Chief Train Dispatcher in rest day relief service subject to Article 3 (b), whether such temporary vacancies occurred on the day the Chief Train Dispatcher was required to take one regularly assigned day off per week, or not. Neither has it been the practice to include the filling of temporary vacancies on positions of dispatchers covered by the Dispatchers' Agreement in rest day relief service subject to Article 3 (b), whether such temporary vacancies occurred on the day a trick dispatcher was taken from his regularly assigned position to work on a position of Chief Train Dispatcher because the Chief Train Dispatcher had been required to take one of his regularly assigned days off, or otherwise.

Accordingly, no support for the "Johnny-come-lately" position of the Organization can be found in the recognized practice on this property long known to both parties to the instant dispute.

For the reasons fully set forth in this submission, there is no basis for the instant claim, and it must therefore be denied.

All matter contained herein have been the subject of discussion in conference or through correspondence between the parties hereto on the property.

(Exhibits no Reproduced.)

OPINION OF BOARD: The parties agreed at the Referee Hearing that the issue presented for determination by this claim is the same as the issue raised in Award 11407. Consequently, and for the reasons stated in that award, this claim must also be denied.

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 22nd day of May, 1963.