



Award Number 17915

Docket Number TD-18189

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOO LINE RAILROAD COMPANY

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

- (a) The Soo Line Railroad Company, (hereinafter "the Carrier") violated the existing Agreement between the parties, Rule 2(a) and 10(b) thereof in particular, by its handling of assignments to extra relief service which resulted in the loss of one day's pay by Train Dispatcher W. G. Johnson on December 22, 1965.
- (b) Carrier shall now be required to compensate Claimant Johnson one day's pay at pro rata rate of train dispatcher for December 22, 1965, a day on which he was deprived of service to which he was contractually entitled.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is made a part hereof the same as though fully set forth herein.

For ready reference, applicable portions of said Agreement rules pertinent to this dispute are quoted below.

"Rule 2(a). Eight hours within a spread of nine hours shall constitute a day's work for assistant chief and night chief positions. Eight consecutive hours shall constitute a day's work for train dispatcher."

"Rule 3(c). Assigned assistant and/or night chief dispatchers and trick train dispatchers who are directed by the management to perform service as trick train dispatcher outside of their regular assigned position will be compensated at the rate of time and one-half of the trick train dispatcher position filled. Penalty time under this agreement will not apply to employees who obtain new assignments through the exercise of seniority, until initial service performed on new assignment, or when directed to perform service as chief, assistant and/or night chief dispatcher."

"Rule 10(a) Train dispatcher extra boards shall be established by management in each train dispatcher's office on the Soo Line Railroad Company. Train dispatchers who are not regularly assigned as train dispatchers may select the extra board of their choice by notifying the General Superintendent, in writing, with copy to the Division Superintendent, General Chairman and Office Chairman, American Train Dispatchers Association."

Claimant W. G. Johnson, third oldest extra dispatcher, worked his regular Saturday through Thursday telegrapher's relief assignment throughout December, except for the 23rd, 26th, and 30th, when he performed extra relief service as a third trick dispatcher.

Copies of the March 20, 1961, rules and working conditions agreement between the parties, as amended, is on file with the Board and is made a part of this submission by reference.

OPINION OF BOARD: The essential facts in this case are undisputed. On Monday, December 20, 1965, trick train dispatcher H. R. Krubsack, whose regularly assigned hours are 8:00 A.M. to 4:00 P.M., was used in relief of the assistant chief dispatcher, whose hours are normally 8:30 A.M. to 5:30 P.M. Since, under the Hours of Service Act, Mr. Krubsack could not have worked his regular assignment on Tuesday, if held on duty until 5:30 P.M. on Monday, he was released at 5:00 P.M. with no loss of pay. Mr. Krubsack resumed his regular first trick assignment on Tuesday, December 21, 1965.

Organization claims that if Carrier had not allowed Kurbsack to go off duty at 5:00 P.M. he would not have had sufficient rest to be available under the Hours of Service Law to fill his regular assignment on December 21 and the vacancy on his assignment that would thereby have been created would have been filled by R. L. Hamilton, an extra train dispatcher, and in turn Hamilton would not have been available because of the Hours of Service Law for a dispatcher vacancy which he actually worked on December 22, and Claimant would then have been entitled to fill the latter vacancy.

The question before us is whether Rule 2(a) of the Agreement between the parties prohibits the Carrier from allowing a regularly assigned train dispatcher who is filling a temporary vacancy to go off duty one-half hour before the scheduled off-duty time, with no reduction in pay, in order that he may be made available under the Hours of Service Law to fill his own regular assigned position on the following day. Rule 2(a) reads:

"Rule 2(a). Eight hours within a spread of nine hours shall constitute a day's work for assistant chief and night chief positions. Eight consecutive hours shall constitute a day's work for train dispatcher."

The Organization contends that the "early quit" was improper and characterizes it as a device to circumvent the requirements of the Federal Hours of Service Law resulting in the loss of a day's work to which Claimant would have been entitled. Organization admits that permitting an "early quit" in and of itself is not a violation of the agreement, but that when it is used to achieve the result which it did it is a violation of the Agreement.

To be entitled to damages Claimant must first prove a violation of the Agreement separate and apart from any consideration of loss to the Claimant. Here Claimant has attempted to characterize certain lost work opportunities as legal damages and then asserts, in effect, that if there are damages there must have been a breach of the agreement.

Such is not the case. Claimant has not proved an independent breach of the agreement, therefore, any loss to the Claimant was not recoverable damages.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1970.