Award No. 18070
Docket No. TD-18610

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SEABOARD COAST LINE RAILROAD COMPANY

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

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier"), violated the effective agreement between the parties, Articles 1(a), 1(b), and 11(a) thereof in particular, when it refused to compensate regularly assigned second trick Assistant Chief Dispatcher, P. S. Carter (hereinafter referred to as "the Claimant"), for eight hours at rate of time and one-half of applicable rate of Chief Dispatcher's position, computed in accordance with Article 11(a), for eight hours' service performed on that position 8:00 A. M. until 4:00 P. M. on Friday, May 10, 1968, after completing eight hours assignment on regularly assigned position of Assistant Chief Dispatcher commencing 4:00 P. M., ending 12:00 Midnight Thursday, May 9, 1968.

(b) The Carrier shall now compensate the individual claimant for amount of the difference between the pro rata rate and time and one-half rate of Chief Dispatcher's position for eight hours to which he is entitled under the terms of the agreement.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board and by this reference that Agreement is made a part of this submission as though fully set out.

For the Board's ready reference, Articles I(a), I(b) and II(a), the Agreement rules primarily involved, are below quoted in full:

"ARTICLE I.

(a) Scope.

The term 'train dispatcher' as hereinafter used (and as defined in paragraph (b) of this rule) shall be understood to include chief, night chief, assistant chief, trick, relief and extra dispatchers, excepting only such chief dispatchers as are actually in charge of dispatchers and telegraphers and in actual control over the movement of trains

dispatchers and other similar employes; to supervise the handling of trains and the distribution of power and equipment incident thereto; and to perform related work."

"ARTICLE II.

HOURS OF SERVICE AND OVERTIME

(a) Time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime, and shall be paid for at the rate of time and one-half on the minute basis. Eight consecutive hours will constitute a day's work."

Articles I(a) and (b), quoted above, while largely taken from the former SAL agreement, are a composite of the respective rules on both former properties.

Article II (a) was identical on both former properties and was carried over to the current agreement without change. It does not, therefore, follow that because this rule had a former Seaboard identity that only prior interpretations to the Seaboard rule are applicable to the rule now in the "new" agreement. Former Coast Line interpretations are just as applicable.

Pertinent correspondence with regard to this claim is attached to this submission as Carrier's Exhibits A through L, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: There is a long line of awards by this Board holding that although the occupant of the position of Chief Dispatcher is excepted from the schedule agreement, Train Dispatchers relieving him are entitled to all of the benefits of the Agreement. In Award 11560 we said:

". . . It is not reasonable to say that when (Train Dispatchers) relieve a Chief Dispatcher they are no longer covered by the Agreement. If we consistently held that way, we would be upsetting a normal and reasonable arrangement and practice. We would further ignore contract rights to which covered employes are entitled. It is not our function to deprive covered employes of rights and privileges contracted for them by their certified representative. It is, rather, our responsibility to examine the total agreement and apply the facts thereto."

Carrier argues that this firm principle does not apply on this property because this Carrier never "paid an employe subject to the current Agreement, or prior Agreements, for relieving on the Chief Dispatcher's position, at the overtime rate of the Chief Dispatcher's position." This practice on the property, extending over many years, says the Carrier, has given meaning and intent to the applicable rules which take precedence over the Awards of this Board.

It is a well established principle that a firm established practice, known, accepted and adhered to by the parties, constitutes an interpretation of the

meaning and intent of a written rule, but only when the language of that rule is vague or ambiguous and is subject to several meanings.

Article I (a) (Scope) says that the term train dispatcher "shall be understood to include chief, night chief, assistant chief, trick, relief and extra dispatchers . . ." Only one chief dispatcher in each dispatching office is excepted from the rules of the Agreement. There is no rule providing for compensation to a covered employe who relieves a Chief Dispatcher. In the absence of such a rule, a firm established practice on the property directly relating to such a situation is relevant.

But no such a practice has been established by convincing evidence in the record. Carrier states that "there is no history or practice of paying for relief on the excepted Chief Dispatcher's position at the rate of time and one-half when vacancy thereon is worked by Assistant Chief, Night Chief or trick train dispatchers." This is a mere assertion, and not evidence. Carrier is obliged to produce evidentiary facts of specific incidents of times, places, events, etc., which leave no doubt that such a practice exists.

The only proof of an alleged practice relied upon by the Carrier is a letter dated June 15, 1966, written by Carrier's Director of Personnel to the General Chairman. That letter is in reply to a claim appealed from the Superintendent's decision. That letter states in part as follows:

> ". . . By filing and appealing this claim you are attempting to insert a rule in the agreement which is not contained therein. You have taken the position that the senior available extra dispatcher is entitled to protect Chief Dispatcher work. Such position is unfounded and not supported by agreement rules.
>
> The Chief Dispatcher is an official of this Company, and is wholly excepted from the scope of your working agreement. The Superintendent has the unilateral right to fill the Chief Dispatcher's position with anyone that he feels has the necessary experience and qualifications. . . ."

This was not a claim for compensation for an employe protecting Chief Dispatcher work. It involved only a question of seniority regarding who is entitled to protect that work. Neither this letter nor the letter of July 23, 1960 (Carrier's Exhibit B), establish a practice with respect to pay for a train dispatcher who relieves a Chief Dispatcher and performs that work.

For the reasons herein stated, the Board is obliged to conclude that there is merit to the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1970.

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