

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SEABOARD COAST LINE RAILROAD COMPANY

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

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier") violated the effective Agreement between the parties, Article VII (d) (3) thereof in particular, when it failed to properly compensate extra Train Dispatcher R. E. Bounds (hereinafter referred to as "the Claimant") for a period of service covered by the dates November 18 and 19, 1968.

(b) The Carrier shall now compensate the Claimant the difference between the amount earned in train dispatcher service November 19, 1968, and that which he would have earned had he remained on his telegrapher's assignment November 18 and 19, 1968.

EMPLOYEES' 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 Article VII (d) (3) referred to in the Statement of Claim is here quoted:

"ARTICLE VII

(d) Loss of Time Changing Positions

(3) When extra train dispatchers are called from their regular assignments in other service to perform service as train dispatcher, they will be paid the rate of the position they fill in dispatcher service, but if the change from one service to the other requires them to lose time account of the Hours of Service Law, their compensation shall not be less than it would have been had they continued on their regular assignments in such other service.

Example: A telegrapher holding a regular assignment as such paying \$3.00 per hour is called to perform extra serv-

train dispatcher for one day, but thereby of a necessity loses two days from his regular telegrapher position. He earns as a dispatcher, \$33.00; his rate on his regular position from which he lost two days was \$24.00 per day. He will be paid \$48.00 instead of \$33.00. If any travel pay is earned under Article IV(h)(2) the amount earned will be applied toward making up the difference of \$33.00 and \$48.00."

Mr. Bounds was not paid as telegraph operator on November 18 and 19, 1968, as he was held off his assignment as telegraph operator on those days so that he might, in accordance with the aforequoted directions, as well as Rule VII (d)(3), work on position of relief train dispatcher commencing at 3:59 P. M. to 11:59 P. M., November 19, 1968.

Claim was submitted in behalf of Claimant R. E. Bounds for the difference between the amount earned in train dispatcher service on November 19, 1968, and that amount he would have earned had he remained on his telegrapher's assignment November 18 and 19, 1968. This claim was handled in accordance with the current dispatchers' agreement and was declined by Carrier's highest officer designated to handle such matters. Article VII (d)(3) of the agreement has been quoted for the Board's convenience. Subject rule sprang from the former Seaboard Air Line agreement, and was carried over to the current agreement without change. The interpretation and application of the rule prior to merger are applicable to the rule now in the "new" agreement and its application does not change or does not take on a new or different posture simply because the two railroads effected a merger.

Pertinent correspondence with regard to this claim is attached to this submission as Carrier's Exhibits "A" through "H".

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant herein was an extra dispatcher, with regular assignment as third trick telegraph operator in Atlanta, Georgia. On November 15, 1968, he was instructed that he would be relieved from his third trick assigned telegraph operator's position on November 18, 1968, so that he could be used on a second trick train dispatcher's position on November 19, 1968, without violation of the Hours of Service Law. He did not work in any capacity on November 18. He worked as train dispatcher on November 19. No work was available to him as extra train dispatcher on November 20, 1968. The Petitioner says that he returned to his regular assignment (telegrapher) and observed November 20 as rest day of that assignment.

Article VII(d)(3) of the applicable Agreement provides:

"(3) When extra train dispatchers are called from their regular assignments in other service to perform service as train dispatcher, they will be paid the rate of the position they fill in dispatcher service, but if the change from one service to the other requires them to lose time account of the Hours of Service Law, their compensation shall not be less than it would have been had they continued on their regular assignments in such other service.

"Example: A telegrapher holding a regular assignment as such paying \$3.00 per hour is called to perform extra service as train dispatcher for one day, but thereby of a necessity loses two days from his regular telegrapher position. He earns, as dispatcher, \$33.00; his rate on his regular position from which he lost two days was \$24.00 per day. He will be paid \$48.00 instead of \$33.00. If any travel pay is earned under Article IV(h)(2) the amount earned will be applied toward making up the difference of \$33.00 and \$48.00."

The claim is for the difference between the amount that Claimant earned in train dispatcher service on November 19, 1968, and the amount that he would have earned had he remained on his telegrapher's assignment on November 18 and 19.

The Carrier contends that as Claimant earned more by working as telegrapher and as train dispatcher during the period from November 1 to 26, 1968, then he would have earned as telegrapher during that period, further allowance is not due, and that the claim is not supported by Article VII(d)(3) of the Agreement.

In the opinion of the Board, the Carrier misconstrues the rule. The example set out under the rule indicates that it was the intent to insure the employe against any loss of compensation for each period of time he is removed from his regular assignment in other service to protect extra dispatcher work until such extra dispatcher work has been completed and the employe is returned to his regular assignment in other service. Had any other basis been contemplated, such as weekly or monthly, it would have been an easy matter to have so provided. It is well settled that this Board cannot amend rules through interpretation.

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 13th day of November 1970.

Keenan Printing Co., Chicago, Ill.

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