Award No. 18456
Docket No. TD-18577

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter referred to as "the Carrier") violated the existing schedule Agreement between the parties, Article IV (k) and VII (d) thereof in particular, by its failure to compensate Train Dispatcher C. E. Enyart at the pro rata rate of Position No. 25 on September 28, 29 and 30, 1968, in its Springfield, Missouri train dispatching office.

(b) Because of said violation Carrier shall now compensate Claimant Enyart at the pro rata rate of Position No. 25 on September 28, 29 and 30, 1968.

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 incorporated into this Ex Parte Submission as though fully set out herein.

For the Board's ready reference Articles IV (k) and VII (d) of said Agreement are here quoted in full:

"ARTICLE IV
Seniority

(k) Temporary Vacancies

1. Temporary vacancies or new positions of sixty (60) days' duration or less may be filled without bulletining as hereinafter provided in this Section (k). Regularly assigned train dispatchers in the seniority district will be permitted to temporarily transfer to such temporary vacancies or new positions, or to positions made vacant by such temporary transfers, in accordance with their respective seniority; the position finally made vacant by such rearrangement of force will then be assigned to the senior qualified extra train dispatcher on the seniority district.

2. A regularly assigned train dispatcher temporarily transferring under this Section (k) will, upon termination of such temporary

temporary vacancy for the same three work days he would have received pay for three days.

OPINION OF BOARD: Immediately prior to September 28, 1968 the Claimant was assigned to temporary vacancy position No. 25 with scheduled hours from 11:30 P. M. to 7:30 A. M. Saturday through Wednesday and with Thursday and Friday as rest days. This temporary vacancy existed from September 17 to October 2, 1968.

At or about 7:42 A. M. on Saturday, September 28, 1968, the regular incumbent on Relief Assignment No. 11, who was due to report for work at 7:59 A. M., called in sick. Claimant was called and directed to fill Relief Position No. 11. He worked Relief Position No. 11, 7:59 A. M. to 3:59 P. M. on Saturday, September 28 and from 7:30 A. M. to 3:30 P. M. on Sunday and Monday, September 29 and 30, 1968.

Friday, September 27, 1968 was Claimants' rest day on temporary vacancy position No. 25. He was not due to report for work until 11:30 P. M. on Saturday, September 28, 1968. Instead, he worked position No. 11 from 7:59 A. M. to 3:59 P. M. on that day. Since Claimant began work on his rest day, Saturday, September 28, he was paid at the overtime rate for his work on that day as provided in Article III (a) 3 of the Agreement.

Basically, the question which the Petitioner seeks to resolve is the interpretation of Article VII (d) which reads as follows:

> "Loss of time on account of Hours of Service Law, or in changing positions by direction of proper authority, shall be paid for at the rate of the position in which service is performed immediately prior to such change."

There is no question that the Claimant was transferred to Relief Position No. 11 "by direction of proper authority." Employes ask whether "time lost" means "money, or the opportunity to earn money, or the right to earn money?" Answering its own question, the Employes say that it means "the opportunity to earn money or the right to earn money." This, they say, is the only reasonable and sensible interpretation of this rule. There are, however, conflicting awards and the Employes ask for a determination with finality. The neutral member is sympathetic with the Employes' request for a final determination establishing clear, unequivocal and irrevocable principles to which both parties would once and for all time be bound and thus discourage similar subsequent violations and/or claims. But his many years of service as a Referee on all of the Divisions compels him to reluctantly conclude that this is but a wishful thought. The best that can be done is to observe, affirm and perpetuate those principles and rulings on this property which are not palpably erroneous.

Public Law Board No. 300 on this property has adjudicated the identical issue. In Award No. 8 that Board said:

> "This dispute involves a claim involving the Federal Hours of Service Law where tricks on the same work day are involved. Award 8984 has determined this issue and held that it was not a violation of the Agreement. We concur with the findings in that Award and adopt the position taken therein. On the other hand, Third Division Awards 2742 and 7403 have established the principle that similar

claims for different work days are valid. Since in this dispute the claim is for the same work day, it will be denied."

The conclusions reached in said Award No. 8 follow the findings in Award No. 5 of the same Public Law Board.

Award No. 8984 discusses the subject in depth and makes a comprehensive analysis of the language in an identical rule. Comparing the language of "loss of time" in the rule with court actions for lost time "because of wrongful injury, or under accident and disability insurance policies" the Board adopted the holdings in cases cited in the legal encyclopedia "Words and Phrases." "All of them," says that Award, "without exception, hold that 'loss of time' means loss of compensation." In substance, that Award interpreted "loss of time on account of Hours of Service Law" to be loss of compensation on the same calendar day.

Whatever may be said about the Awards cited by Employes, and some rightfully construe the word "day" as the 24 hour period commencing with the employes' scheduled starting time, they are not on this property, and, for the most part, do not construe a rule identical with Article VII (d).

Consistency and uniformity of contract interpretation is to be encouraged. Only in this way can parties to an agreement know how to administer its provisions. Interpretations of contract rules should be overruled only where clear and palpable error exists. Awards 5 and 8 of Public Law Board No. 300 are not palpably erroneous. On the contrary they follow clearly reasoned awards of this Division.

Since the claim here is for tricks on the same work days, the Board finds that the claim is without merit.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.

Keenan Printing Co., Chicago, Ill. Printed In U.S.A.