

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, 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 Schedule Agreement between the parties, Article III(a) paragraph 1, and Article III(c) thereof in particular in depriving Claimant D. Oelslager of service which he was entitled to perform on April 17, 1969, one of the individual Claimant's assigned rest days.

(b) Because of said violation the Carrier shall now be required to compensate Claimant Oelslager one day's compensation at time and one-half rate.

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 III(a) paragraph 1, and Article III(c) referred to in the Statement of Claim and the first paragraph herein are here quoted:

"(a) Rest Days

Each regularly assigned train dispatcher will be entitled and required to take two (2) regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief."

"(c) Rest Day Duration

The term 'rest days' as used in this Article means that for a regularly assigned train dispatcher and/or regularly assigned relief train dispatcher having the same starting time for five (5) consecutive days, seventy-two (72) hours (48 hours in instances of non-consecutive rest days) and for a regularly assigned relief dispatcher (except as above provided) and extra train dispatcher (who per-

Carter was paid at overtime rate of pay, inasmuch as he was used on his rest day, under Article III(b), the Service on Rest Days rule.

Claim was presented that the regularly assigned train dispatcher on position No. 3, Mr. Oelslager, be paid one day at overtime rate due to being deprived of service on his rest day, on position No. 3. Contention was made by the Office Chairman the claim was supported by Articles 3(a) and (b) as well as Award No. 16836, covering a previous dispute occurring under the former agreement on one of the companies comprising the present merged company. On further appeal, the General Chairman contended the claim was also supported by Articles 3(a) and (c). This claim was progressed up to and including Carriers highest designated officer and was at all times declined.

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

(Exhibits not reproduced)

OPINION OF BOARD: The Claimant was a regularly assigned train dispatcher, assigned to position No. 3, hours 12 Midnight to 8:00 A. M., with Thursday and Friday as assigned rest days. On Thursday, April 17, 1969, one of Claimant's rest days, there was no relief or extra dispatcher available to provide relief. The Carrier used a senior regularly assigned dispatcher, who was also on his rest day, to relieve Claimant. The Petitioner contends that in the absence of a relief or extra dispatcher, Claimant was entitled to be used on the date involved in preference to using another regularly assigned dispatcher.

The Carrier contends that the senior train dispatcher was used on his assigned rest day to relieve Claimant under the provisions of Articles IV (e) reading:

"In filling positions of train dispatchers covered by this agreement, fitness and ability being sufficient, seniority shall govern."

While there is no specific rule in the Agreement providing how rest day relief service is to be performed in the absence of a relief or extra train dispatcher, Article III, Sections (a) and (b) contemplate that a regularly assigned dispatcher may be required to work on his rest day. It has generally been held that in the absence of a relief or extra employee, the regular incumbent of a position is entitled to work his position on a rest day thereof. This principle is sound and there is no apparent reason why it should not apply herein. See Award 16836. The performance of work on a rest day of a position does not come under Article IV (e). The parties to the Agreement should be able to resolve questions of this nature without resort to this Board, but their failure to do so requires that the dispute be adjusted by the Board. The claim will be sustained.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1971.