

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19395
Docket Number TD-19364

William M. Edgett, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Fort Worth and Denver Railway Company

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

(a) The Fort Worth and Denver Railway Company (hereinafter "the Carrier") violated the existing Agreement between the parties, Special Agreement signed October 3, 1968 thereof in particular, when Carrier refused to reimburse Extra Train Dispatcher W. E. Probst for actual cost of meals and lodging November 16, 1969 through November 30, 1969, inclusive.

(b) Carrier shall now be required to reimburse Claimant W. E. Probst at the rate of seven (7) dollars per day for each date indicated in paragraph (a) above.

(c) The amount claimed in paragraph (b) above shall be subject to the payment of interest thereon at the maximum rate allowable in accordance with the statutes of the State of Texas.

OPINION OF BOARD: Because the regularly assigned dispatcher on position No. 7 at Carrier's Fort Worth office was to be absent for a period in excess of ten days, Carrier, following an agreed interpretation of the agreement, filled the position as provided by Rule 18, which reads:

"RULE 18 - Temporary Vacancies. Vacancies and new positions of more than ten days and not to exceed six months will be considered temporary positions, will not be advertised, and may be filled by senior qualified train dispatcher making application therefor within five days following announcement of such position by Superintendent.

"A regularly assigned train dispatcher filling a temporary vacancy will, upon termination of such temporary assignment, return to his regular position or he may displace any junior train dispatcher filling another temporary assignment before returning to his regular assignment."

Claimant was the senior qualified extra train dispatcher and, Carrier says he was assigned in accordance with his bid. This fact is of no relevance however, for under the agreed interpretation of a supplementary agreement between

the parties he was required to accept the assignment, because of his position as senior extra dispatcher, and so would have filled the vacancy in any event.

This claim is for per diem at the rate of \$7.00 per day for the period of claimant's service on position No. 7. It is based upon a Memorandum of Agreement, dated October 3, 1968, referred to as the Extra Dispatchers Agreement. The relevant portion of that Agreement follows:

"MEMORANDUM OF AGREEMENT

IT IS AGREED THAT:

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Extra train dispatchers required to travel in excess of thirty (30) normal travel route miles from his point of employment in other service of the carrier to protect train dispatching work in the consolidated train dispatching office at Fort Worth and who is required to lay over at Fort Worth one or more nights shall be reimbursed for actual costs of meals and lodging at Fort Worth at the rate of seven dollars (\$7.00) per day.

If after completing the extra dispatching service, an extra train dispatcher cannot return to his position in other service without loss of one or more days of compensation after being released as train dispatcher, he shall be compensated not to exceed one (1) day at straight time daily rate applicable to his position in other service.

This agreement will become effective with the date of the coordination."

The Organization's position is that the Schedule Agreement provides only for regular and extra dispatchers and that since claimant was not regularly assigned he was necessarily an extra dispatcher. If the claimants' status was that of an extra train dispatcher he must receive the indicated per diem under the Extra Train Dispatchers Agreement.

Carrier relies on Rule 21, which reads:

"Rule 21 - Extra Work. Vacancies and new positions of ten days or less shall be considered extra work. When the requirements of the service on the position occupied in other classes of service will permit, extra train dispatchers will be allotted the extra work in the order of their seniority."

Carrier asserts that only vacancies of less than ten days can be considered extra work and that a dispatcher on a position longer than ten days, but not regularly assigned, is the incumbent of a temporary position. The question of claimant's status, which is central to a decision on the claim, is resolved by Carrier from a reading of Rule 21. Unquestionably work which extends beyond ten days fails to meet the Rule 21 definition of "Extra Work". However, it is by no means certain that the status of the train dispatcher follows solely from the definition of extra work.

As noted, if claimant was an Extra Dispatcher during the claim period he must be paid the per diem prescribed by the Extra Dispatcher Agreement. There is merit to the Organizations' argument that Carrier seeks to establish a previously unrecognized status through its interpretation of Rule 21. The record shows that the seniority status of dispatchers has been limited to two classes, regularly assigned and extra. The Agreement refers to these classes in a number of places. For example, reference is made to regularly assigned dispatchers in Articles 5(a), (b), (d), 10, 18, 19, 20, 22(b) and 29. Reference to extra dispatchers is found in Articles 5(c), 20 and 22. Thus it is clear that the parties by Agreement and working practice have provided that a dispatcher will be in one of the classes referred to above. It is impossible to accept, without considering this fact, Carrier's insistence that the Article 21 definition of "Extra Work" is dispositive of the question here for decision.

Granted that claimant was by definition performing work not defined as extra work by the Agreement. It is equally certain that he was not regularly assigned. The Organization objects to Carrier's interpretation, saying that it creates a new class, "temporary regular". The label is of no particular consequence but viewing the entire Agreement, as we must, it is clear that acceptance of Carrier's theory does require the interposition of a new class. Claimants' status during the claim period was that of an Extra Dispatcher, and therefore he must be accorded the benefits provided by the Extra Train Dispatchers Agreement. We will sustain parts (a) and (b) of the claim. Part (c) must be denied as it raises matter never raised on the property.

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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.

A W A R D

Claim sustained, as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Kallen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.