

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20346
Docket Number TD-20456

Joseph A. Sickles, 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 effective Agreement between the parties, Articles III(a) and IV(k) thereof in particular, when it failed and refused to compensate Claimant Train Dispatcher C. E. Doggett at time and one-half the daily rate applicable to trick train dispatchers for service performed on Position No. 34 Friday, September 29, 1972.

(b) Because of said violation, Carrier shall now be required to compensate Claimant Doggett the difference between one (1) day's compensation at the pro-rata daily rate and time and one-half the daily rate applicable to trick train dispatchers for September 29, 1972.

OPINION OF BOARD: The basic facts giving rise to the claim are not in dispute.

Claimant was a Guaranteed Assigned Dispatcher. He was used on temporary vacancy on Dispatcher Position No. 22 with assigned hours of 11:30 p.m. to 7:30 a.m., Friday through Tuesday, with Wednesday and Thursday as rest days.

Claimant went off duty at 7:30 a.m. on Wednesday, but was used on another position (No. 34) from 3:30 p.m. to 11:30 p.m. on Friday.

Claimant alleges a violation of Articles III(a) and IV(k) of the Agreement because the Carrier refused to compensate Claimant at time and one-half the daily rate for service performed on Position No. 34 on Friday, September 29, 1972.

A number of provisions of the Agreement are referred to by the parties in their prosecution and defense of the claim. Those Agreement sections are quoted below:

"ARTICLE III

Rest Days, Vacation and Relief Service

(a) Rest Days

"1. Each regularly assigned train dispatcher will be entitled and required to take two regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five days per week. Any regularly assigned train dispatcher, who is required to perform service on the rest days assigned to his position, will be paid at rate of time and one-half for service performed on either or both of such rest days.

2. Extra train dispatchers who are required to work as a train dispatcher in excess of five consecutive days shall be paid one and one-half times the basic straight time rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days.

3. Rest day or days, as provided for in paragraph 1 of this section (a), means the number of hours as shown below shall elapse between the time required to report on the day preceding rest day or days and the time required to report following the rest day or days. The same definition will apply to sixth or seventh days under paragraph 2 of this section (a). These definitions will not apply in case of transfers account train dispatchers exercising seniority.

	2 Con- secutive Days Off	One Day Off (Not Con- secutive)
Regularly assigned train dispatcher, other than relief train dispatcher	72 hours	49 hours
Relief train dispatcher	56 hours	32 hours
Extra train dispatcher (paragraph 2)	56 hours	32 hours"

"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.

(1) Moving from One Assignment to Another

1. A train dispatcher moving from one assignment to another under the provisions of this Agreement may do so on any day such an assignment is scheduled to work without regard to the rest days of the assignment from which he moves and will automatically assume the conditions, including rest days, of the assignment to which he moves. A train dispatcher who works more than five (5) consecutive days in moving from one assignment to another will be compensated therefor at the pro rata rate.

2. A train dispatcher who moves up on a temporary vacancy or temporary position under the provisions of Section (k) of this Article will not be permitted to return to his regular assignment or move up on another assignment on either of the two rest days of the assignment from which he moves, except that if he lost one day moving from his regular assignment to the temporary assignment by reason of the Hours of Service Law, he may return to his regular assignment or move to another assignment on the second rest day of the assignment from which he moves."

"APPENDIX ITEM No. 2.

MEMORANDUM OF AGREEMENT

IT IS AGREED:

(1) The Company will establish a minimum of two (2) but not more than four (4) Guaranteed Assigned Dispatcher positions

"in the Central Train Dispatching office at Springfield; said positions to be bulletined and assigned in accordance with the provisions of Article IV (j) of the effective schedule agreement, except as to assigned hours, rest days, and territory; compensation to be shown per position worked but not less than rate of trick train dispatcher.

(2) Guaranteed Assigned Dispatchers will be paid under the applicable Agreement provisions, with a minimum of five (5) days for each work week, Monday through Sunday, in which fully available, and rest days need not be consecutive.

(3) Compensation for service shall be in accordance with applicable Agreement provisions, except time-and-one-half rate shall be payable for either or both the sixth or seventh day of extra work in a work week, but not in the case of the sixth or seventh day when more than one work week is involved.

(4) Incumbents of Guaranteed Dispatcher positions will be used on the same basis as extra train dispatchers, except the Guaranteed Assigned Dispatchers will be used as senior extra train dispatchers (seniority to prevail as between the incumbents of the positions herein provided for), and available Guaranteed Assigned Dispatchers shall be placed on any resultant vacancies in preference to extra train dispatchers and will remain as 'Guaranteed Assigned Dispatcher' even though filling temporary vacancies as provided by Article IV (k) of the effective schedule agreement. Incumbents of Guaranteed Dispatcher positions will not be used in another craft while so assigned, and the guarantee herein provided for shall accrue only to the assigned incumbents of the positions herein provided for.

(5) Guarantee time paid Guaranteed Assigned Dispatchers may be used for learning road, training or assisting other dispatchers, in which event a day on which such training or assistance is required shall be considered the same as a day on which train dispatching service is performed.

(6) Guarantee time will be paid at rate of trick train dispatcher.

(7) This Agreement will become effective October 1, 1965, and shall continue in full force and effect until it is changed under the provisions of the Railway Labor Act, as amended; provided, however, that it may be terminated and cancelled as of

"March 31, 1966 upon not less than thirty days advance written notice by either party hereto. Should this Agreement be terminated or cancelled as provided herein it shall have no further force and effect except as to transactions occurring during its life time."

The Organization claims that the wording of the Agreement, with specific reference to Article IV(1) 2 requires the Claimant to observe the rest days of the assignment after completing the work week of the assignment. Accordingly, the Claimant asserts that the rest day duration of Article III(a) 3 is governed by the rest day duration of the position which Claimant left, in this case, seventy-two (72) hours.

The Carrier notes that under Appendix Item #2, incumbents of Guaranteed Dispatcher positions will be used on the same basis as extra train dispatchers. Accordingly, the Carrier argues that Article III(a) 3 only required a fifty-six (56) hour rest day duration because that section specifically so states with reference to extra train dispatchers.

After a thorough review of the record, the Board is of the view that the duration of the number of hours of rest to which Claimant was entitled controls the dispute, i.e., fifty-six vs. seventy-two hours.

Both parties have cited Awards to the Board in support of their respective contentions. The Carrier points out that the Awards relied upon by the Organization did not contemplate the distinctions between the fifty-six and the seventy-two hour rest day requirements. While the text of the Opinions of the Boards do not speak in terms of duration of rest days, we do note that the language of Article III(a) which contains the required number of hours which constitute a rest day, was specifically placed before the Board in Awards 18411, 18427 and 18428, which Awards dealt with these same parties. Moreover, we do not note that the Awards cited by Carrier dealt with the same distinction in that regard.

We have considered, at length, the Awards brought to our attention by the parties. In Third Division Award 18411 (Dolnick) the Board considered a claim against this Carrier alleging violations of Article III(a), among others, for a failure to pay time and one-half rate to the Claimant therein.

That Claimant was a Guaranteed Assigned Dispatcher working a temporary vacancy. That Claimant was assigned to work on a rest day, but was not paid at the premium rate. The Award concluded that:

"The September 25, 1965 Memorandum of Agreement does not automatically replace all of the schedule agreement rules with respect to the rights of Guaranteed Assigned Dispatchers....if the Carrier wanted to make the rest days for position No. 35 Wednesday and Friday or any other two non-consecutive days he could

"have done so. But the position bulletin, as required in paragraph (1), apparently listed the rest days as Wednesday and Thursday. This being the case, Claimant automatically assumed those as his rest days under paragraph (1) of Article IV..."

Awards 18427 and 18428 (O'Brien) considered factual circumstances much similar to those before this Board. The Opinion of the Board in 18427 stated:

"The parties, the issues, and the Agreement involved herein are the same as were involved in Award 18411. We have reviewed that Award and do not find it to be in palpable error. It is controlling herein and the claim will be sustained."

The Carrier relies upon a number of Awards of Public Law Board No. 300 (Moore). Case No. 22 dealt with an alleged violation concerning assignment to temporary vacancies. That Award determined that when a Claimant is assigned to temporary vacancy, he does not assume all of the conditions of the assignment including the rest days. In reaching its conclusion, Award No. 22 held that Appendix Item No. 2 is controlling over Article IV(k), and noted that Guaranteed Assigned Dispatchers are used on the same basis as extra train dispatchers. Case No. 24 of Public Law Board No. 300 concerned a failure to compensate a Claimant at premium rates for service performed on a rest day. The Award cited Award No. 22 for the proposition that the Claimant did not earn rest days of the temporary vacancy, but that working conditions were controlled by Appendix Item No. 2. Awards No. 26, 29, and 31 were consistent with Awards 22 and 24.

However, Award No. 17 of Public Law Board No. 300 considered a claim dealing with a temporary vacancy (Position No. 2) which was worked by the Claimant therein on December 22, 23, 24 and 25. The Claimant was required to fill a temporary vacancy on Position No. 7 on December 26.

The Organization contended that because December 26 was a rest day of Position No. 2, the Claimant was entitled to time and one-half for being required to work on the rest day of that position. The Board found that Claimant could not be moved to another temporary assignment on the rest day of the first temporary assignment. Thus, because Claimant was required to perform service on the rest day of the temporary assignment that he was filling, he was entitled to the difference between the pro rata rate and the time and one-half rate.

Finally, we have considered Award No. 62 of Public Law Board No. 588, dealing with the same parties. While that Award did not deal with the precise issue before the Board in the instant dispute, it did rely upon Award

No. 18411. Although "incumbents of Guaranteed Dispatcher positions will be used on the same basis as extra train dispatchers...", Public Law Board No. 588 concluded that said language does not automatically replace all of the Schedule Agreement rules with respect to the rights of Guaranteed Assigned Dispatchers.

It noted that Article IV(k) permits regularly assigned train dispatchers in the seniority district to temporarily transfer to a temporary vacancy, to a new position, or to positions made vacant by a temporary transfer in accordance with seniority. Award 62 of Public Law Board No. 588 stated:

"The mere fact that a regular Train Dispatcher is also a Guaranteed Dispatcher does not deprive him of his seniority rights: nor does it change his designation to that of an extra dispatcher. He may be used on the same basis as an extra train dispatcher but consistent with his seniority rights. Once assigned to a position he may not be bumped by a junior dispatcher. He is not on the extra board. He is entitled to occupy an assigned temporary position until it is ended unless displaced by a train dispatcher with greater seniority in the district." (underscoring supplied)

The various Awards do not attempt to distinguish the apparent inconsistencies noted above.

With the record in the posture noted above, and recognizing an apparent conflict in authority, we have fully reviewed all provisions of the basic Agreement and Appendix Item No. 2.

The Carrier suggests that it is not proper to consider any provisions of the Agreement not cited and relied upon while the matter was considered on the property. While we would not find a violation of a provision of an Agreement which was not raised on the property, nonetheless, the entire Agreement is before us and we feel that it is appropriate to view other sections as they may relate to the appropriate interpretation of the portion of the Agreement which was allegedly violated.

Item 4 of Appendix Item No. 2 clearly recognizes that Guaranteed Assigned Dispatchers will fill temporary vacancies as provided in Article IV(k). Article IV(k) deals with temporary vacancies. Article IV(l) refers to dispatchers on temporary vacancies and states that they will not be permitted to return to a regular assignment or move up on another assignment on either of the two rest days of the assignment from which he moves, with certain exceptions not here material.

We have fully considered Appendix Item No. 2 and note that Guaranteed Dispatchers will be used on the same basis as extra train dispatchers. However,

we do not conclude that that language disposes of the dispute and adhere to the explanation of that language as contained in Award 18411 and Award 62 of Public Law Board No. 588. We note that Guaranteed Assigned Dispatchers are paid under the applicable Agreement with a minimum of five days for each work week and that rest days need not be consecutive. A full review of the Appendix does not compel us to conclude that the Guaranteed Assigned Dispatcher is considered as an extra train dispatcher as those terms are used in Article III(a) 3. While a Guaranteed Assigned Dispatcher may be used on the same basis as an extra train dispatcher, Guarantee Time is paid at the rate of trick train dispatcher.

The Board concedes that this matter is not free of all doubt and concedes that reasonable minds may differ on the appropriate application of Article III(a) 3, as reasonable minds have apparently disagreed in the past as is evidenced by the conflict in prior Awards. Nonetheless, upon a consideration of the entire record, the Board is of the view that the Claimant, under the facts of this record, was entitled to a seventy-two hour elapsed time from duty. The record shows that his elapsed time was sixty-four hours. Accordingly, 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 Employee involved in this dispute are respectively Carrier and Employee 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.