

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21771
Docket Number TD-21517

William G. Caples, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Duluth, Missabe and Iron Range Railway Company

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

(a) The Duluth Missabe and Iron Range Railway Company (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the Carrier and the American Train Dispatchers Association, (hereinafter referred to as "the Organization"), Rule 7 thereof in particular, when on May 22, 1974, the Carrier established a 2nd trick train order position 3:00 p.m. to 11:00 p.m., working Sundays through Thursdays with Fridays and Saturdays as rest days. Relief on Fridays each week is properly provided by Relief #3 position in accordance with Rule 6 of the current agreement to provide for the fifth day of service for Relief #3 position. Saturday each week is blanked to prevent furnishing relief in violation of Rule 7.

(b) Because of said violation, the Carrier shall now be required to compensate Claimant Extra Train Dispatcher T. R. Kennedy the difference between what he was paid as 1st trick Operator at Proctor, Minn. (rate of \$43.93 daily) and \$60.09 trick dispatcher rate (or \$16.16 difference) for each of the following Saturdays, May 25, June 1, 8, 15, 22, 29 and July 6 and 13, 1974.

OPINION OF BOARD: Prior to the date of the first day of this claim, May 25, 1974, there had been scheduled at the Carrier's operation at Iron, Minnesota, a Chief Dispatcher, (an excepted position), three (3) Assistant Chief Dispatchers, three (3) CTC Dispatchers and three (3) assigned relief men, designated Relief No. 1, - Chief and Assistant Chief, Relief No. 2 - Assistant Chief and CTC Dispatcher and Relief No. 3 - CTC Dispatcher, nine (9) designated assignments were scheduled to cover six, seven-day per week dispatcher assignments, or forty-two shifts and a relief of two shifts for the Chief Dispatcher, a total of 44 shifts.

Under date of May 16, 1974, the Chief Dispatcher issued the following:

"Bulletin a 2nd trick train order job on Friday May 17th then put the incumbant of the job on May 22nd with Sat. and Tues. off.

"Change Relief No. 3 to work 2nd trick order on Tuesday instead of Day Clerk and do this effective May 28th. Saturdays will not be covered on this job."

The General Chairman on May 17, 1974 sent a message to the Chief Dispatcher regarding this bulletin, part of which is as follows:

"* * * Any change in territory or rest days under Bulletin Rule 14 necessitates that the positions be advertized by bulletin and we cannot restrict seniority to any new position.

Further, blanking of Saturday of 2nd trick train order job is in violation of Rule 7 of our current agreement and cannot be permitted.

When extra man is available, he should be allowed to work the tag day otherwise the incumbant of the position."

The assignment was established and this claim is brought alleging violation of certain rules of the agreement which are as follows:

"RULE 5

Rest Days

(a) 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.

REST DAYS DURATION

(b) Where rest days are consecutive the term 'rest days' as used in Rule 5 (a) means that for a regularly assigned train dispatcher seventy-two hours, and for a relief train dispatcher (who performs five consecutive days' service as train dispatcher) fifty-six hours shall elapse between the time required to report on the day preceding the 'rest days' and the time required to

"report on the day following the 'rest days'; where rest days are non-consecutive the elapsed hours shall be forty-eight and thirty-two respectively. These definitions of the term 'rest days' will not apply in case of transfers account train dispatchers exercising seniority.

ESTABLISHMENT AND CHANGE OF REST DAYS

(c) Regularly assigned weekly rest days will be established for each position and when so established will be changed only when necessary by reason of an increase or decrease in force, to meet service requirements or by agreement between the Superintendent and General Chairman. Not less than seventy-two hours' advance written notice shall be given when rest days are to be changed.

"RULE 6

Relief Service

Where relief requirements regularly necessitate four or more days' relief service per week, relief train dispatchers shall be employed, regularly assigned, and compensated at rate applicable to positions worked. When not engaged in dispatching service they shall be assigned to other service as may be directed by proper authority and shall be paid for such service not less than the rate applicable to trick train dispatchers. Relief service of less than four days' per week will be performed by extra dispatchers, who will be paid the daily rate of each position relieved.

"RULE 7

Combining or Blanking Positions for Relief

Combining or blanking positions for relief purposes shall not be permitted except as agreed to between the Superintendent and General Chairman."

It is the position of the Organization that the Carrier violated the provisions of Rule 7 of the Agreement when it established the 2nd Shift Trick Train Dispatcher position with the intention of blanking it for weekly Saturday rest day purposes and combining its duties and responsibilities with those of the 2nd Shift Assistant Chief

Train Dispatcher position on such days, without Agreement between the Superintendent and the General Chairman.

It is the position of the Carrier that there has been no violation of the Agreement in this case and that Rule 7 has no application to the particular facts involved. Asserting there is no agreement rule which prohibits the establishment of a regular six-day per week position.

The question to be decided by this Board is whether the establishment of an additional train dispatcher job, for six days of a work week, on one (2nd) shift, which necessitates rearrangement of work and rest days, for one of the other nine dispatchers constitutes:

"Combining or blanking positions for relief purposes (which) shall not be permitted except as agreed to between the Superintendent and Chairman"?

It being Carrier's contention that it established a new, additional position and did not combine that new position for relief purposes. Further contending that the Organization must prove a combination of positions before this Board can grant relief, showing what positions were combined. (Third Division Award 21300)

The Organization cites Third Division Award 8019 between the same parties, which cites Awards 2454, 5069 and 7013, as favorable to their view. The facts in that case were that the number of crews had been reduced and that agreement was necessary. However, only those who lost work because of the violation or who were required to work on Sunday on both Divisions as contrasted to a single Division, were to be compensated.

The Organization cites Fourth Division Award 3443, favorably to the effect:

"Whether phrased in terms of 'res judicata', 'stare decisis' or any other legal terminology, the fact remains that the best ends of labor-management relations are served by a basic predictability of Awards, especially when a dispute involves the same parties, same rules and same basic evidence. Accordingly, the author of this Award is not disposed to disturb such a prior Award, absent some compelling showing of error."

A statement with which this Board is in accord and its limitation that the parties, the rules and the basic evidence all be the same. The basic evidence is different here. A new position was established for a six-day job, and the only cases cited have ruled the establishment of a new position of five or six days does not violate the Agreement. (Third Division Awards 5898 and 21300) If Rule 7 is to apply a showing of combination or blanking of job for relief must be shown and the burden of proof and showing rests upon the party claiming the violation; mere assertion of violation is not enough. Then if there is no agreement as to blanking or combining, a violation occurs. The position was established not to blank or combine for relief purposes to assist the Assistant Train Dispatcher a specified six days a week. No jobs were shown to have been blanked or combined.

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

The Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1977.