

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23018  
Docket Number TD-22848

Richard R. Kasher, 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 agreement between the parties, Article III(a) and (b) thereof in particular, when it refused to compensate Train Dispatcher H. E. Mullinax at time and one-half rate for service performed on March 27 and 28, 1976.

(b) The Carrier shall now be required to compensate Train Dispatcher H. E. Mullinax the difference between straight time or pro rata rate which he was paid and one and one-half times the daily rate of trick train dispatcher to which he was entitled on the dates and in accordance with the rules cited in paragraph (a) above."

OPINION OF BOARD: The facts of this claim are undisputed. At the time this dispute arose, the Claimant was regularly assigned as trick train dispatcher to a second shift position, Western District, at Florence, South Carolina, with assigned weekly rest days Saturday and Sunday. On Thursday, March 25, 1976, the rest days of his position were changed from Saturday and Sunday to Monday and Tuesday. Claimant worked seven consecutive days, Monday, March 22, 1976 through Sunday, March 28, 1976 and was paid at the straight time rate of pay.

A claim was instituted for the time and one-half rate instead of the straight time rate of pay which he was paid for service on Saturday and Sunday, March 27 and 28, 1976. The governing Agreement provisions are Article III, sections (a), (b) and (d), which read in pertinent part as follows:

"ARTICLE III

(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.

"Unless prevented by the requirements of the service, extra train dispatchers will be relieved from train dispatcher service for a period of two (2) days for rest day purposes after they have performed five (5) consecutive days' work as train dispatcher.

Such 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 a train dispatcher in excess of five (5) days per week.

(b) Service on Rest Days

Regularly assigned train dispatchers who are required to perform service on rest days assigned to their position will be paid at rate of time and one-half for service performed on either or both of such rest days.

\* \* \* \* \*

(d) Change in Rest Days

The Company shall designate established rest days for each position in accordance with paragraph (a) of this Article. Not less than seventy-two (72) hours' notice shall be given of change in assignment of any rest days."

The Carrier raises several equitable arguments supporting its refusal to compensate Claimant at the penalty rate. The Carrier first argues that Claimant could have exercised seniority rights in accordance with Article IV (c)(5) of the Agreement, which reads as follows:

"ARTICLE IV

\* \* \* \* \*

(c) Exercise of Seniority

\* \* \* \* \*

- (5) By the train dispatcher affected when his assigned weekly rest days are changed or when there is a change of more than one hour in the starting time of his assignment."

The Carrier asserts that, since it gave a ten-day notice of the change of rest days, Claimant had ample time to consider the change and exercise his seniority rights to avoid working more than a five-day week.

The Carrier next poses a hypothetical situation:

"If the rest days of the second shift had not been changed on March 25, Claimant would have worked twelve (12) days and had four (4) rest days during the second pay period (March 16-31, inclusive). With the change in rest days, Claimant still worked twelve (12) days and had four (4) rest days during the same period. If the change had been made effective on Monday, March 22 or March 29 the day following his Saturday and Sunday rest days, he would have lost two (2) days pay as he would have worked only ten (10) instead of the normal twelve (12) days during the period March 16-31."

The Carrier puts much emphasis on the fact that Claimant elected the second shift assignment. By so electing, argues the Carrier, Claimant accepted the rest days of that assignment which were Monday and Tuesday, not Saturday and Sunday.

The Carrier's arguments do not suffer for lack of merit, but contract language and awards previously issued by this Board support the Organization. Article III (a) gives each regularly assigned train dispatcher two rest days per week. A week consists of five work days followed by two rest days. When a dispatcher is required to work his rest days, Article III (b) requires that he be compensated at the time and one-half rate. Referee Daugherty concurs in Award 5897:

"...It is clear that, except for emergencies and other unusual situations, the Parties meant to establish (1) a work period of five consecutive work days; (2) an ensuing rest period of two consecutive days; and (3) a penalty on the Carrier, in the form of premium pay, for the hours it requires its dispatchers to work on such rest days. From this we think it follows that they meant to define 'week' as a period of seven days beginning with the first of five consecutive work days..."

In regard to the Carrier's argument that Claimant, by electing to remain in his position, effectively created a new assignment for himself and nullified his claim, this Board refers to Referee Carter in Third Division Award 7319:

"A change in rest days does not have the effect of terminating the old assignment and creating a new one where the occupant does not exercise his seniority. If such were the case the change of rest days would require that the new position be bulletined. This means, also, that the position remains the same irrespective of the change in rest days and consequently there is no moving from one assignment to another. Awards 5586, 5807. The fact that the occupant of the position may exercise his seniority rights after a change in rest days does not appear to affect the situation when the right has not been exercised. We must necessarily come to the conclusion that the Carrier has the right, after notice, to change the rest days of a position and thereby change the work week of the position, but it remains the same assigned position throughout..."

This Board accordingly sustains the claim.

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. Paulre  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.