NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23175
THIRD DIVISION Docket Number TD-22622

John J. Mangan, Referee

PARTIES TO DISPUTE (American Train Dispatchers Association
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

System Docket No. CR-9, Case No. 7-1 - Claimant D. J. Harpster

Please allow following time claims for March 1977, account being displaced from Section D 3rd trick temp. with Wed. and Thurs. as relief days not in accordance with ATDA agreement. ATDA General Chairman W. W. Mix not notified properly in advance of transfer of work, former Section C:

3- 1-77 - 1 - 8 hr day punitive rate
3- 2-77 - 1 - 8 hr day punitive rate
3- 3-77 - 1 - 8 hr day punitive rate
3- 4-77 - 1 - 8 hr day pro rata rate
3- 5-77 - 1 - 8 hr day pro rata rate
3- 6-77 - 1 - 8 hr day punitive rate
3- 7-77 - 1 - 8 hr day punitive rate
3- 8-77 - 1 - 8 hr day punitive rate
3- 9-77 - 1 - 8 hr day punitive rate
3-10-77 - 1 - 8 hr day punitive rate
3-11-77 - 1 - 8 hr day punitive rate
3-12-77 - 1 - 8 hr day pro rata rate
3-13-77 - 1 - 8 hr day pro rata rate
3-14-77 - 1 - 8 hr day punitive rate
3-15-77 - 1 - 8 hr day punitive rate
3-16-77 - 1 - 8 hr day punitive rate
3-17-77 - 1 - 8 hr day punitive rate
3-18-77 - 1 - 8 hr day pro rata rate
3-19-77 - 1 - 8 hr day pro rata rate
3-20-77 - 1 - 8 hr day punitive rate
3-21-77 - 1 - 8 hr day punitive rate
3-22-77 - 1 - 8 hr day punitive rate
3-23-77 - 1 - 8 hr day punitive rate
3-24-77 - 1 - 8 hr day punitive rate
3-25-77 - 1 - 8 hr day pro rata rate
3-26-77 - 1 - 8 hr day pro rata rate
3-27-77 - 1 - 8 hr day punitive rate
3-28-77 - 1 - 8 hr day punitive rate
3-31-77 - 1 - 8 hr day punitive rate

OPINION OF BOARD: As a result of certain railroad mergers involving the Carrier in this dispute, it was decided that various rearrangements of train dispatching territories would be required and that Desk "C", one of the territories involved, would be abolished in the Altoona, Pa. office.

The Carrier notified the Organization in a notice, dated October 22, 1976, of its proposed plan to abolish that office. Subsequent to that notice, the Carrier addressed a second notice, under date of October 26, 1976, to the Organization. It referred to the contents of the letter, dated October 22, 1976, and also stated that it proposed to put the plan into effect commencing December 15, 1976 and suggested a meeting for November 3, 1976 at 11 A.M. at the Pittsburgh Office to discuss the work equities.

A meeting was held on November 3, 1976, at which time the rearrangements of the Dispatching Desks were discussed. Also discussed was the possibility that Desk "D" may be overworked. A thirty-day trial period was discussed and a re-evaluation was to be made after that time.

On December 3, 1976, a notice was sent to all Train Dispatchers advising them that on January 3, 1977, the territory handled on the "C" Desk would be transferred to the "D" Desk. No written agreement was entered into pertaining to the manner in which seniority of Train Dispatchers affected by the abolishment of Desk "C" was to be adjusted.

Under notice, dated January 21, 1977, the Division Superintendent sent a notice to the Claimant which stated that, effective January 21, 1977, the remaining territory handled on the "C" Dis-Patcher Desk will be transferred to the "D" Dispatcher Desk. It was suggested that he exercise seniority as provided by the Regulations.

The Carrier finalized such arrangements on or about January 24, 1977 when it abolished Desk "C" and transferred the work of that desk to the "D" Dispatching Desk. The Claimant was displaced from Desk "D" by a Dispatcher from "C" Desk. He was then transferred to Desk "A". The General Chairman informed the Division Superintendent on January 24, 1977 that by abolishing the Train Dispatching Desk "C" and adding part of the territory to Train Dispatching Desk "D" that it was in violation of Regulation 3-G-1 of the P.R.R. Schedule Agreement.

The Claimant, thereafter, filed this claim under Regulation 3-G-1 of the Agreement between the parties, upon the ground that the Organization had not agreed to the proposed changes in writing.

The Carrier opposed the claim and urged that it should be dismissed for want of jurisdiction. It asserted that the provisions of Regulation 3-G-1, under which this claim was filed, had been superseded by the provisions of Section 503 of the Regional Rail Reorganization Act of 1973.

Section 3-G-1 is material to this case and is quoted:

> "When seniority or dispatching districts or parts thereof are merged or separated, not less than thirty (30) days' advance notice thereof will be given, in writing, by the Manager of Labor Relations to the General Chairman, and the manner in which the seniority of Train Dispatchers affected is to be exercised shall be adjusted by agreement, in writing, between the General Chairman and the Manager of Labor Relations."

The Carrier is not persuasive in asking for dismissal of the instant case on the jurisdiction basis it is urging. This Board may adjudicate the dispute upon the language contained in the Agreement by interpreting and/or applying the Agreement as written in accordance with the provisions of the Railway Labor Act. We find, therefore, that the Carrier's defense that this Board does not have jurisdiction of the subject matter of this dispute has no merit.

The Carrier also asserted that, if Regulation 3-G-1 did cover this dispute, that it had complied with that section; that proper notice was given to the Organization of the proposed changes; that it had meetings with the Organization and reached a meeting of the minds; that the General Chairman did not acknowledge, in writing, the notice sent to him, nor did he signify any disagreement with the terms of the understanding; that the Organization's representatives, apparently, did nothing to oppose the proposed changes and said nothing when it was their duty to speak out; instead they ostensibly concurred in the arrangements to be made; that the only inference that could be drawn by the Carrier was that the Organization acquiesced in the action to be taken by the Carrier; that the Organization is, therefore, estopped from contesting the action taken. No evidence was submitted to indicate that the Carrier had suffered any irreparable damage.

The Organization avers that Regulation 3-G-1 applies when either seniority or dispatching districts are involved and that thirty days' notice must be given when seniority or dispatching districts are involved; that there had been discussions about the abolishment of Desk "C", but that no agreement had ever been reached as required by 3-G-1; that the Organization cannot be estopped from proceeding with this claim, because the first notice that it received that actual steps were to be taken concerning the disposition of the remainder of Desk "C" dispatching territory was in the notice sent to Claimant on January 21, 1977, advising him of the abolishing of Desk "C"; that the Organization immediately responded to such notice on January 24, 1977; that its action was timely, therefore, cannot be charged with abstaining from taking action or acquiescing in the Carrier's action. The Organization argued further that in view thereof, the claim should be sustained.

Upon considering all facets of the present claim, we find that the word "or" in the Agreement is the deciding factor, so that when either the seniority or dispatching districts are involved thirty (30) days written notice must be given.

The first written notice that the Carrier was finally going to dispose of the remaining territory on Desk "C" was set forth in the above mentioned notice of January 21, 1977. The Organization timely answered the Carrier in its letter of January 24, 1977.

There was no meeting of the parties or any agreement in writing reached between them as to the disposition of the remaining territory on Desk "C" as required by Regulation 3-G-1.

We can only conclude that the Agreement has been violated. (See Award 11068)

We now turn our attention to that part of the claim which requests compensation.

The Organization, on Record page 12, points out the basis for the claims entered and explains that no additional compensation is requested for days when the Claimant worked the same trick on the same day of the week after the improper abolishment of his position,

and the amount payable under this claim when the time and one-half rate was claimed is the difference between the pro rata or straight time rate received and the time and one-half rate now being claimed.

Section 7-B-1 of the Agreement states:

> "Any adjustment growing out of claims covered by this Regulation (7-B-1) shall not exceed in amount the difference between the amount actually paid the claimant by the Company, and the amount he would have been paid by the Company, if he had been properly dealt with under this Agreement."

It is, therefore, the ruling of the Board that the claim is sustained as provided in 7-B-1 of the Agreement.

The Organization submitted a notice to this Board, dated March 17, 1979, which it had received from the Carrier. The Carrier objected to the admission of the notice into the Record of the dispute on the ground that it had not been submitted on the property. The argument of the Carrier is most persuasive. We find, therefore, no consideration may be given to the said notice because it had not been submitted on the property.

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 Employes involved in this dispute are respectively Carrier and Employes 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 in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.