

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23470
Docket Number TD-23389

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Missouri-Kansas-Texas Railroad Company

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

(a) The Missouri-Kansas-Texas Railroad Company (hereinafter referred to as "the Carrier"), violated its Train Dispatchers schedule working conditions agreement, including Articles 3(a) and (b), and 4(b) thereof, when, beginning approximately July 1, 1968 it failed to appropriately compensate several train dispatchers at the rate of time and one-half for services performed on their weekly rest days in the instance of regularly assigned train dispatchers, and sixth and/or seventh consecutive days of train dispatcher service in the instance of extra train dispatchers.

(b) Because of said violation, the carrier shall now compensate the individual train dispatcher claimants, referred to in paragraph (a) above, the difference between time and one-half the daily rate of compensation applicable to the train dispatcher position worked, and the amount previously allowed them for such train dispatcher services beginning approximately July 1, 1968 and continuing until such time as proper time and one-half compensation is being paid on a current basis.

(c) The identity of the individual claimants and their involved claim dates shall be determined by a joint check of the carrier's records.

OPINION OF BOARD: The agreement between the parties provides that the employees are entitled to time and one-half payment for service performed on rest days and in certain other instances.

Article 4 states that:

"Train Dispatchers shall be monthly employees but the monthly compensation shall be computed on a daily basis."

and Article 4(b) states that the daily rate of pay shall be determined by multiplying the regular monthly rate by 12 and dividing the result by 261.

In March of 1979, the employees advised that they were being paid for rest day service at time and one-half the hourly rate, rather than time and one-half the daily rate.

Although the Organization asserts that the Manager of Personnel advised that said payroll practice would be altered, nonetheless the Carrier failed to do so, and it continued to compensate the employees in the objectionable manner, which prompted this claim.

When the matter was brought to the attention of the Manager of Personnel on March 22, 1979, he issued a reply four days later, in which he stated:

"I am unable to determine just when or on what occasions the instructions contained...have not been followed, however, we are re-issuing instructions to insure that Train Dispatchers used for service on rest days are compensated at one and one-half times the daily rate instead of the punitive hourly rate basis."

The Carrier subsequently responded to the claim that it was "too vague and indefinite" to constitute a proper claim, and that there was no agreement support. In a later denial, the Carrier raised the doctrine of laches, as well as the assertion that the claim was too vague and indefinite and was without agreement support.

As we have reviewed this claim, it submits a request for reimbursement which encompasses a period of 11 years.

The Board has difficulty with the Organization's contentions in this claim. Without immediate regard to the doctrines of laches, Railway Labor Act requirements of reasonable diligence in progression of claims, and related matters, it appears to us that when a group of employees accepts the method of computing certain payments for an 11 year period, there is an acquiescence in such practice, and in order to ignore that indication of the manner in which the parties have applied certain obligations we would require a much stronger showing of an obvious violation than we have before us. We will dismiss the Claim for lack of support.

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

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That the Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.