NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23478
Docket Number TD-22936

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: "System Docket No. CR-7, Central Region - Allegheny Div. Case 5-1

"Claim of American Train Dispatchers Association that Claimant D. J. Harpster, Train Dispatcher Altoona Movement Office, Altoona, Pa., is entitled to eight (8) hours pay either pro rata or punitive rate Train Dispatcher for the following dates when agreement was violated. Regulations 4-B-1, 4-C-1, 4-D-1 and 7-B-1 of present agreement with American Train Dispatchers Association governing.

1/26/75 - Pro rata rate - assigned work day - not permitted to work
1/28/75 - " " " " " " " " " "
2/ 2/75 - " " " " " " " " " "
2/ 9/75 - " " " " " " " " " "
2/16/75 - " " " " " " " " " "

1/24/75 - Punitive rate - assigned relief day - performed service
1/25/75 - " " " " " " " "
1/31/75 - " " " " " " "
2/ 7/75 - " " " " " " "
2/14/75 - " " " " " " "
2/21/75 - " " " " " " "

1/21/75 - Punitive rate - performed service off assigned hours
1/22/75 - " " " " " " "
1/23/75 - " " " " " " "
1/29/75 - " " " " " " "
1/30/75 - " " " " " " "
2/ 4/75 - " " " " " " "
2/ 5/75 - " " " " " " "
2/ 6/75 - " " " " " " "
2/11/75 - " " " " " " "
2/12/75 - " " " " " " "
2/13/75 - " " " " " " "
2/18/75 - " " " " " " "
2/19/75 - " " " " " " "
2/20/75 - " " " " " " "

OPINION OF BOARD: Claimant was regularly assigned as a relief train dispatcher on the Section "A" desk in carrier's Altoona, Pa., office. His regular work schedule was the Sunday and Monday day shift, 7:00 a.m. to 3:00 p.m; Tuesday and Wednesday shift, 3:00 p.m. to 11:00 p.m.; and Thursday, the 11:00 p.m. to 7:00 a.m. shift. Friday and Saturday were rest days.

Claimant was assigned by carrier on January 20, 1975, to work with a member of the M & W department on the preparation of a gross ton mileage report. This report is used for the M & W department. The project was completed on Friday, February 20, 1975, and claimant returned to his relief dispatcher assignment on the following Sunday.

During the time claimant was assigned to the gross ton mileage report, he worked from 8:00 a.m. to 5:00 p.m., with Saturday and Sunday as rest days. This work schedule coincided with the schedule worked by R. E. Chambers of the M & W department, who was working with claimant on the project. On March 4, 1975, claimant alleged that carrier had violated his rights under the contract because of the work schedule it gave him during his special assignment from January 20, 1975, to February 20, 1975. Because of this violation, he claimed:

(1) pro rata pay for the days he was normally scheduled to work but did not (alleged violation of Regulation 4-B-1);

(2) the punitive rate for rest days he was required to work during the special assignment (alleged violation of Regulation 4-C-1); and

(3) the punitive rate for all services performed on the special project during hours not regularly assigned (alleged violation of Regulation 4-D-1).

Claimant itemized his claim by days and alleged violations. A total of twenty-five (25) days are included in the claim in one of the three categories of violations mentioned. The claim was denied at every level. After considerable delay, due to extensions requested by both sides, it has been submitted to this board for resolution.

The Organization makes two basic arguments that require consideration:

(1) Claimant was required to accept the special assignment. Consequently, it is clear on its face that he worked a schedule considerably different from his regular assignment. Carrier is required to pay the appropriate penalties, as enumerated in regulations 4-B-1, 4-C-1, and 4-D-1.

(2) Whether he was assigned the project or he agreed to do it makes no difference. The contract is clear and unambiguous on all points contested. Carrier cannot make a private deal with an employe to transcend the requirements of the agreement. The Organization is the bargaining agent and has the right to require compliance with the contract at any time.

The Organization presented awards in support of its position.

Carrier argues that since the special assignment at issue here is not covered under the agreement, any alleged violation of the agreement is inappropriate and has no standing before this Board.

It further argues that claimant has performed this same assignment for the last eight or ten years, with no complaint from him or the Organization. It finally argues that if claimant would have voiced an objection when he was asked to work on the gross ton mileage report, he would not have been required to do the job. Claimant performed the work every year for the past eight or ten years with no complaint. He set his own work schedule and his own rest days during the period he was assigned to the project. Claimant should not now be heard to say that a contract violation exists. Carrier should not pay a penalty for an assignment that claimant volunteered to accept.

The record of this case reveals that claimant accepted the assignment and that he requested that his rest days be changed to coincide with the rest days of his coworker (R. E. Chambers) on the project. The record is barren of any probative evidence that claimant or the Organization lodged a complaint about claimant's assignment to the project before or during the one month he performed his duties. This failure to complain can only be construed by carrier and this Board to mean that the parties involved did not consider the arrangement between carrier and claimant in any way objectionable.

This Board is mindful of the line of cases that state that individuals cannot make a private deal with a carrier that is violative of the collective bargaining agreement. This Board subscribes to that basic concept as essential to the stability of union-management relations. It has so stated in many decisions in every Division.

Our decision in the instant case does not contradict that principal. Carrier and claimant have engaged in the same arrangement for a period of eight to ten years. (The record is not precise on this point, but it is agreed that the arrangement has existed for a long period of time.) The Organization cannot now come forward and complain about such an

arrangement by pressing a claim for penalty pay. The Organization, by its acquiescence to the arrangement over such a long period of time, has signaled the carrier that the arrangement in this particular case would not be queried. To now file a claim to tell Carrier that the arrangement that has existed for the last eight or ten years is no longer acceptable is inappropriate and not acceptable procedure in good faith labor relations.

If the Organization and/or the Claimant wanted to set carrier straight on this issue, they should have, at the outset of the assignment, made their objections known. Given the long period of time during which the arrangement was accepted by the union, its failure to file a complaint bars them from lodging an objection now.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.