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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Form 1

Award No. 30740
Docket No. TD 30884
95-3-92-3-773

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE:

(American Train Dispatchers Association
(
(CSX Transportation Inc.

STATEMENT OF CLAIM:

- (A) CSX Transportation, Inc. ('Carrier') or 'CSXT' violated Article 10 of its Train Dispatchers' Basic Schedule Agreement applicable in the Jacksonville Centralized Train Dispatching Center ('JCTDC') when it failed to allow guaranteed assigned Train Dispatcher ('GATD') C. R. Cutlip sick leave pay for Monday June 24, 1991.
- (B) Because of said violation, CSXT shall now allow Claimant C. R. Cutlip sick leave for the date mentioned in Paragraph (A) above.

Identical claim on behalf of C. R. Cutlip for Saturday, July 6, 1991 and J.A. Foshee for Saturday.

- (A) CSX Transportation, Inc. ('CSXT or Carrier') violated its Train Dispatcher's Basic Schedule Agreement applicable in the Jacksonville Centralized Train Dispatching Center including Appendix 6 Item 3 thereof, when it failed to compensate Claimant Guaranteed Assigned Train Dispatcher ('GATD') J. A. Foshee at time and one-half rate of pay for service performed on Thursday and Friday October 17, and 18, 1991.

(B) Because of said violation, CSXT shall now compensate Claimant GATD J. A. Foshee the difference between time and one-half rate of pay, and compensation previously allowed him for services performed on October 17, and 18, 1991.

Identical claim on behalf of C. R. Cutlip for Thursday, June 27 and for Friday, July 12, 1991.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In 1991 six claims were submitted on behalf of Claimants (Guaranteed Assigned Train Dispatchers) for sick leave and overtime compensation because, according to the Organization, the Carrier chose to wait until the employees' work schedule was completed and then decide if sick leave was applicable. A true rest day is pre-scheduled and may not be designated retroactively to avoid payment of sick leave. Further, service performed on a day after a combination of five work or sick days in a workweek is compensable at time and one-half.

Rule 4 provides for overtime pay for Extra Train Dispatchers who are required to work in excess of 5 consecutive days (6th or 7th days).

Article 10 provides for sick leave and Appendix A, **Guaranteed Assigned Train Dispatchers**, provides for a Saturday through Friday workweek with rest days which need not be consecutive, and Paragraph 3 discusses overtime pay.

The Claimants advise that there are only three requirements for sick leave benefits under Rule 10, i.e. [1] regularly assigned, [2] sickness and [3] the day of sick leave must be a workday.

In the instance of Cutlip's initial claim it advised that management had assigned him to work on June 24, but he called in sick for that day and was later notified that June 24 was being shown as a rest day. Similarly it is asserted that he had been assigned to work on July 6. The claims were denied because the Claimant "...is assigned to perform forth (40) hours of service per work-week during a 7 day work week beginning on Saturday. Mr. Cutlip worked forty (40) hours...." Similar assignment alterations operated to defeat certain overtime pay.

Similar claims were handled concerning Cutlip and Claimant Foshee.

On the property the parties disagreed as to prior history in this type of case and each party argued that a lack of prior claims supported its position in that regard. There was also disagreement as to the burden of proof regarding the asserted past practices.

The Organization submitted numerous statements from pertinent employees tending to support its contention.

The Carrier points out that GATD positions have Saturday through Friday workweeks with two (not necessarily consecutive rest days) and the incumbents remain available and are guaranteed five days of pay per week whether they perform that much service or not.

There seems to be no dispute presented in the documents that the Claimants had been told that they would be required to work on certain days and then, when a Claimant marked off sick, that day was designated as the rest day. See for example June 24, 1991 and July 6, 1991 regarding Cutlip and October 12 and 13, 1991 regarding Foshee. The redesignations not only affect sick pay for the days, but also alter overtime compensation since the "day" becomes a rest day rather than a "day under pay" as it relates to work on the sixth and/or seventh day.

Both parties cited Third Division Award 29346 which allegedly involved the same parties and an identical issue. The Carrier's Submission contains an excerpt from that Award as follows:

The thrust of the Organization's argument is that the day claimant was ill was a workday, and that Carrier was not privileged to change it to a rest day after the fact. Carrier has

responded that it tries to advise incumbents in advance if a day is to be considered as a rest day, but it is not required to do so. This is the central issue of the dispute, for if the day was a workday, the Claimant would be entitled to sick pay, regardless of how many days he worked during the week. Article 10 contains no exceptions which would allow us to conclude otherwise. (Emphasis supplied).

We do not have before us the facts of record which prompted the above cited Award. But, the facts of record here show that the Claimants were scheduled to work on certain designated days, and those days were changed to "rest" days only after the employees marked off as sick. Thus, we conclude that Award 29346 is actually supportive of the Organization's position herein.

The Carrier argued a prior practice in defense to the rather clear Agreement language. Thus, it assumed a burden which it did not carry.

Finally, there is an undercurrent of suggestion that employees may have, or may now be able to, "play fast and loose" with the sick leave language to gain unintended benefits. Our reply to that is that the Carrier may always take whatever action it deems appropriate whenever it suspects (and can prove) that any employee is being dishonest in claiming benefits.

A W A R D

Claims sustained

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.