

Award No. 1817
Docket No. TD-1744

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: (a) Claim of the train dispatchers that Train Dispatcher J. S. Olin, Sparks, Nevada office of the Salt Lake Division was improperly compensated for his services on Wednesday, February 28, 1940, (on which day he was required to work from 8:00 A. M. to 4:00 P. M., a part of his regular relief day) in accordance with the Train Dispatchers' Agreement on this property.

(b) Claim of the train dispatchers that Train Dispatcher J. S. Olin should have been compensated at the rate of time and one-half instead of straight time, and that he be paid an additional one-half day's pay therefor.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the Southern Pacific Company (Pacific Lines) and its Train Dispatchers, Represented by the American Train Dispatchers Association, Governing the Hours of Service and Working Conditions of Train Dispatchers, effective October 1, 1937. Article 3 (a) of said Agreement reads as follows:

"Each regularly assigned train dispatcher, (and extra train dispatcher) who performs six (6) days dispatching service in any one week will be allowed and required to take one day off as a relief day, except when unavoidable emergency prevents furnishing relief. If required to work such relief day, will be allowed compensation on basis of rate and one-half."

Mr. J. S. Olin was the regular incumbent of the permanent Second Trick (4 P. M. to Midnight) position in the Sparks, Nevada office, Salt Lake Division, his established relief day being Tuesday. He worked his permanent assignment on Monday, February 26, 1940, (4 P. M. to Midnight), and as his regular relief day was Tuesday he was not due to report for duty until 4 P. M. Wednesday, February 28th.

An increase in business caused by trains being detoured from another route required additional train dispatchers temporarily in the Sparks office effective 8 A. M. Wednesday, February 28, 1940, to take care of this extra movement. As there were no extra train dispatchers immediately available, Mr. Olin was required to work an assignment (8 A. M. to 4 P. M.) on Wednesday, February 28, 1940, which required him to work eight hours on his designated relief day, for which he was compensated at straight time rate.

POSITION OF EMPLOYES: The employees contend he should be paid time and one-half.

would be entitled under Article 3 (a), *supra*, to compensation for that day computed on "basis of rate and one-half." Olin did not work the hours of his assignment on Tuesday, February 27; in fact, he did not perform any service during the calendar day of Tuesday, February 27. After being relieved from service at Midnight, February 26, he did not return to service for a period of 32 hours, or until 8:00 A. M., Wednesday, February 28.

As stated above, Article 3' (a) merely requires "one day off as a relief day." Although it is true that numerous definitions of a "day" may be found, it is likewise true that a "day" cannot include more than 24 hours. Therefore if Olin received 24 hours off from the time he completed his assignment on Monday, February 26, he would have received, and did in point of fact receive, "one day off" in accordance with Article 3 (a).

The most liberal interpretation that this Board could place on Article 3 (a), would be that, the words "one day off", as contained in Article 3 (a), *supra*, means one calendar day off. In other words, Tuesday being Olin's regularly assigned relief day, he could not be required to work any portion of the calendar day Tuesday unless he was compensated on the "basis of rate and one-half." Even though the Board should so interpret Article 3 (a) there would be no basis for the alleged claim in the instant case, for the reason that, Olin did not perform service at any time during the calendar day of Tuesday, February 27.

The carrier assumes that the petitioner will contend before this Board, as it did in a letter (Exhibit "A") of April 6, 1940, from the vice general chairman of the petitioner to carrier's assistant manager of personnel, that "the period of time off duty constituting this relief day is from 4:00 P. M., Tuesday, until 4:00 P. M., Wednesday." In other words, the carrier assumes that the petitioner will contend before this Board that the "one day off as a relief day" as set forth in Article 3 (a), *supra*, means a period of 24 hours from the time the regular assignment would commence on Tuesday, if Tuesday was not the regularly assigned relief day, or, that, a period of 40 hours must elapse from the time the regular assignment is completed on the day prior to the relief day, and the time the regular assignment commences on the day after the regularly assigned relief day. The carrier has no knowledge of how the petitioner arrived at this conclusion. However, the carrier asserts that it is not based on any understanding or agreement between the petitioner and the carrier, nor is it based upon an agreed upon interpretation of Article 3 (a), *supra*. Furthermore, it is entirely unreasonable, and by no means based on a logical line of reasoning.

The carrier submits that it acted strictly in accordance with Article 3 (a), *supra*, and all of the other provisions of the current agreement, when it compensated Olin at the pro rata rate for services performed as a train dispatcher on Wednesday, February 28, 1940, and it follows therefore that the petitioner was and is without right to submit a claim for compensation and the basis of rate and one-half for service performed by Olin on the said date.

CONCLUSION: The carrier asserts that it has completely established that the petitioner's contention that the claimant, Dispatcher Olin, should be compensated on the basis of rate and one-half for Wednesday, February 28, 1940, is not based on reason or on any provision of the current agreement between the petitioner and the carrier. The carrier further asserts that if this Board sustains the alleged claim in the instant case it is in point of fact interpreting Article 3 (a), *supra*, of the current agreement as to establish a rule that was never agreed on, and is imposing upon the carrier an entirely new rule which it has no power or right to do. The carrier therefore submits that it is incumbent upon this Board to deny the alleged claim in the instant case.

OPINION OF BOARD: The claimant seeks to recover pay at the rate of time and a half for services alleged to have been performed on his relief day. The sole question is what period of time constituted his relief day.

The rule in question reads as follows:

"Relief Days

"(a) Each regularly assigned train dispatcher, (and extra train dispatcher) who performs six (6) days dispatching service in any one week will be allowed and required to take one day off as a relief day, except when unavoidable emergency prevents furnishing relief. If required to work such relief day, will be allowed compensation on basis of rate and one-half."

Tuesday, February 27, 1940, was the claimant's regularly assigned relief day. His assigned hours for each day's shift were from 4:00 P. M. to midnight, and these he worked on Monday, February 27th. To provide adequate dispatching personnel to handle certain detours occasioned by washouts, it was necessary for the carrier to augment the dispatching force and the claimant was recalled to work at 8:00 A. M. on Wednesday, February 28th, instead of at 4:00 P. M., and was continued on the 8:00 A. M. to 4:00 P. M. assignment for several days.

He seeks time and a half pay for these services on Wednesday because he says they were performed on his relief day, which he contends covered the twenty-four hour period from 4:00 P. M. Tuesday, when he would have started work had it not been his relief day, to 4:00 P. M. Wednesday when he normally would have resumed his duties again.

The contention of the carrier is that so long as he was not called on to work on the calendar day of Tuesday, February 27th, the services were not performed on his relief day.

The claimant's contention must be sustained. The relief day referred to in the rule is not the calendar day but the twenty-four hour period starting Tuesday, February 27th, at 4:00 P. M. and ending Wednesday, February 28th, at 4:00 P. M. We base this conclusion on the following grounds.

His relief day did not commence when he ceased work at midnight on Monday. For at least a part of the period of time from then up to 4:00 P. M. of the next day his respite from work was required by the Hours of Service Law and not because that period was included in his relief day as these words are used in the rule.

In the second place we regard the interpretation of the rule claimed by the committee as the only practical one to apply to all cases. And of course it must be applied uniformly to every case. In this connection the committee pertinently asks: "How can the carrier's construction be applied where the particular tour of duty may cover parts of two calendar days?"

In the third place and most important of all, the decisions of this board indicate that the practice on the railroads is to regard the time when an assignment begins as determining its character. For example, a shift commencing at 11:00 P. M. on Saturday and ending at 7:00 A. M. on Sunday is regarded as a Saturday and not as a Sunday assignment. Award 7. The position of the carrier as shown in Award 398 is particularly significant. The carrier says:

"There is no dispute that the service of Mr. Miller commenced on Saturday, therefore, the service which he performed attaches to the day on which such service was started. This practice has been followed on the Northern Pacific prior and subsequent to the negotiations of the Clerks' Agreement. To illustrate: If an employe commences work at, say 10:00 P. M. Saturday, and works until 7:00 A. M. Sunday, with a meal period of one hour, he is allowed straight time rates for the eight hours of service. If such employe had worked six days and commences work at 10:00 P. M. Sunday, working until 7:00 A. M. Monday, with a meal period of one hour, he would be allowed overtime

rates for the eight hours of service. In other words, there has been no segregation of straight time and overtime payments on the basis of the work performed on Sunday; this has been determined on the basis of when the service commenced."

The opinion of this board supported the carrier's contention. It says: "A shift commencing on Saturday and ending on Sunday is a Saturday assignment, and rules providing for punitive payment are not applicable in this instance."

The relief day must start either when the old shift ends or when the new one commences, for in the nature of things the term "relief day" as used in the rule cannot have reference to the calendar day. In the light of the above two awards it seems logical to hold that a relief day starts at the time when the shift would have started on that day and continues for twenty-four hours thereafter.

We cannot overlook the fact that the rule here in question was adopted by these parties after the above mentioned awards were rendered and with a full knowledge of the import of them.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 claimant having performed the work in question on his relief day was entitled to be compensated at the rate of time and a half.

AWARD

Claim (a) sustained.

Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1942.