

Award Number 3094

Docket Number TD-3095

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY—PACIFIC LINES

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association on behalf of Relief Train Dispatcher William M. Jones, Tucson Division, for payment of the amount of \$7.27, representing the difference between pro rata rate and time and one-half rate, assistant chief train dispatcher rate, for service performed as assistant chief train dispatcher 12:01 A.M. to 8:00 A.M., Friday, August 18, 1944, after completing a tour of duty from 8:00 A.M. to 4:00 P.M. on Thursday, August 17, 1944, in compliance with the provisions of Article 2 (a-2) of the current agreement between the Southern Pacific Company (Pacific Lines) and its train dispatchers represented by the American Train Dispatchers Association.

EMPLOYES' STATEMENT OF FACTS: In the Tucson, Arizona office of the carrier, Claimant William M. Jones was regularly assigned to the position of First Relief Dispatcher, designated as position No. 12, with the following working schedule each week:

Sunday	— 8:00 A.M. to 4:00 P.M.—Chief Dispatcher
Monday	— 8:00 A.M. to 4:00 P.M.—Assistant Chief Dispatcher
Tuesday	— 4:00 P.M. to 12 Midnight—Assistant Chief Dispatcher
Wednesday	— 4:00 P.M. to 12 Midnight—Assistant Chief Dispatcher
Thursday	— Rest Day
Friday	— 12 Midnight to 8:00 A.M.—Assistant Chief Dispatcher
Saturday	— 12 Midnight to 8:00 A.M.—Assistant Chief Dispatcher

Mr. Jones worked his regular assignment on Wednesday, August 16, 1944, 4:00 P.M. to 12 Midnight, and after being off duty for eight hours, was required to, and did perform service as Assistant Chief Dispatcher on Thursday, August 17, 1944, (his assigned rest day), from 8:00 A.M. to 4:00 P.M., and following this service period (after being off duty only eight hours) he again performed service on his regular Relief Dispatcher assignment as Assistant Chief Dispatcher, 12 Midnight to 8:00 A.M. For each of these service periods above set forth, he was paid as follows:

August 16—Eight hours pro rata rate of position worked.

August 17—Eight hours time and one-half rate of position worked, in compliance with requirements of Article 3 (a-1) of the current agreement account service on assigned rest day.

August 18—Eight hours pro rata rate of position worked.

The claim is for the difference between pro rata rate and time and one-half rate: Assistant Chief Train Dispatcher rate, for the service period from 12:01

The petitioner in his letter of November 27, 1944 (see paragraph 5 of the foregoing statement of facts), endeavored to support the payment demanded by alleging that the claimant was required on August 18, 1944, to work two shifts within a 24 hour period. By said allegation, the petitioner entirely overlooked the fact that the claimant was paid at the rate of time and one-half for service performed from 8:00 A.M. to 4:00 P.M. on August 17, 1944. In this connection it should also be observed that the 24 hour period in which the claimant actually worked two shifts began at 4:00 P.M., August 16th and ended at 4:00 P.M. August 17th; another and separate 24 hour period began at 4:00 P.M., August 17 and ended at 4:00 P.M., August 18th. It has not been and can not be shown that the claimant worked two shifts in the 24 hour periods which began at 4:00 P.M., August 17th and ended at 4:00 P.M., August 18th, or the 24 hour period that began at 4:00 P.M., August 18th and ended at 4:00 P.M., August 19, 1944; nor can it be shown that he worked any hours except the hours he was regularly assigned on August 18, 1944.

It can not with any logic be contended that during the running of the 24 hour period, which began at 4:00 P.M., August 16, 1944, and ended at 4:00 P.M., August 17, 1944, another and overlapping 24 hour period began within said period. The carrier satisfied the provisions of Article 3 (a-2) likewise, the provisions of Article (a-2) in paying the claimant at the rate of time and one-half for all work performed in excess of 8 hours in the 24 hour period extending from 4:00 P.M., August 16th to 4:00 P.M., August 17, 1944; obviously said 24 hour period could not be extended indefinitely beyond 4:00 P.M., August 17th. If it could thus be extended, then the carrier having once worked a train dispatcher in excess of 8 hours in a 24 hour period would be compelled thereafter to pay him time and one-half for all service performed, including his regular assignment, until he reached a period of 24 hours in which he did not start any work.

The agreement does not contemplate much less imply that a train dispatcher will receive the rate of time and one-half for working not to exceed 8 hours in a day on his regular assignment (see Article 2 (a-1) and Article 3 (c).) If said train dispatcher is required to work in excess of 8 hours on his regular assignment, he is of course entitled to the rate of time and one-half for all time worked on his regular assignment in excess of 8 hours; however, if after completing his regular assignment, train dispatcher is required to work on another assignment and such subsequent work is within the day embracing his regular assignment, he is entitled to the rate of time and one-half for all service on said other assignment.

During the handling of this claim with the carrier the petitioner was unable to cite any agreement provision or any precedent previously established that would justify payment of time and one-half for service performed by a train dispatcher on his regular assignment. For the Board to sustain the claim in this docket would be tantamount to pyramiding penalty payments on a regular assignment when a train dispatcher is used to perform service on his rest day, and for which he has already been compensated at rate of time and one-half.

CONCLUSION: The carrier submits that it has conclusively established that the claim in this docket is entirely without basis and therefore respectfully submits that it should be denied.

OPINION OF BOARD: Claimant was regularly assigned to the position of First Relief Dispatcher with irregular assignments with Thursday as his rest day. On Wednesday, August 16, 1944, he worked his regular assignment from 4:00 p.m. to 12:00 midnight. On Thursday, his rest day, he worked from 8:00 a.m. to 4:00 p.m. On Friday, he worked from 12:00 midnight to 8:00 a.m. For his work on Wednesday and Friday, he received the pro rata rate of the position. For Thursday, he was paid the time and one-half rate. Claimant contends that he should be paid time and one-half for the work performed on Friday.

Claimant relies upon the Overtime Rule as supporting their claim. It is as follows:

"Time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis." Article 2 (a-2).

It is evident that the two eight-hour periods worked on Wednesday and Thursday were within the same twenty-four hour period, which entitled Claimant to the overtime rate for the second eight-hour tour of duty. Claimant was paid the overtime rate for the Thursday work so that no basis for an affirmative award could exist as to that. However, the eight-hour periods worked on Thursday and Friday also were within a twenty-four span and Claimant claims the time and one-half rate for the eight hours worked on Friday.

The parties are in dispute as to what constitutes a "day" as the term is used in this rule. Without going too much into detail, we are of the opinion that it ordinarily means a twenty-four hour period commencing at the beginning of a previous assignment. Under some circumstances it might begin at the commencement of some other service period. It is not disputed that on Wednesday Claimant worked his regular assignment from 4:00 p.m. to 12:00 Midnight. Consequently, Claimant's day commenced at 4:00 p.m. Wednesday and ended at 4:00 p.m. Thursday. Claimant was called and performed work on Thursday, his rest day, from 8:00 a.m. to 4:00 p.m. It is evident, therefore, that the Carrier violated the Agreement in calling Claimant to work within the day commencing on Wednesday at 4:00 p.m. But for this, the Carrier has paid the time and one-half rate prescribed by the Overtime Rule. Claimant's next day would begin at the beginning of his next assignment, to-wit: 12:00 midnight, Thursday night. Claimant having worked but one eight-hour shift during this twenty-four hour period, it being his regular assignment, no basis for time and one-half pay exists.

The eight hours worked on Thursday must be treated as the second eight hour period worked on the day commencing at 4:00 p.m. on Wednesday and cannot be considered as the commencement of a new twenty-four day so as to make the time and one-half rate apply to Claimant's regular assignment commencing at the midnight (Thursday night) following. Time worked cannot be within one twenty-four hour period for the purpose of calculating overtime and in another twenty-four period for the purpose of figuring overtime on a different pay. In the present case, Claimant was improperly used on one eight hour shift and for that he has been properly paid at the penalty rate.

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 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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. J. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1946.