Award No. 3147

Docket No. TD-3128

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ALABAMA GREAT SOUTHERN RAILROAD COMPANY

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

(a) That the Alabama Great Southern Railroad Company did not comply with the requirements of the rule established by Section 2-(a) of the Mediation Agreement of March 14, 1942 (NMB Case A-1122-B) when it failed to pay Train Dispatcher C. S. McLarn at the time and one-half rate, instead of the pro rata rate, for the four (4) hours service he performed in excess of eight (8) hours, i. e., from 11:00 A. M. until 3:00 P. M., on November 14, 1943, February 6, 1944, and on February 20, 1944.

(b) That Train Dispatcher C. S. McLarn now be paid the difference between the pro rata rate which was paid him, and the time and one-half rate required by above referred to Section 2-(a), for the four (4) hours overtime he worked in excess of eight (8) hours, on each of the three days as shown in above paragraph (a).

EMPLOYES' STATEMENT OF FACTS: The Alabama Great Southern Railroad Company is signatory to a Mediation Agreement by and on behalf of each carrier party thereto and its employes represented by the American Train Dispatchers Association, dated March 14, 1942 and identified as NMB Case A-1122-B, hereinafter referred to as the Mediation Agreement. Trick, Relief and Extra Train Dispatchers employed by the Alabama Great Southern Railroad Company are represented by the American Train Dispatchers Association by virtue of an agreement effective September 1, 1929.

Sections 2-(a), 3-(a) and 3-(b) of the Mediation Agreement are pertinent to the instant case and read as follows:

"2-(a). Effective April 1, 1942, 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."

"3-(a). Effective April 1, 1942, each regularly assigned train dispatcher (and extra train dispatchers who perform six consecutive days' dispatching service) will be entitled and required to take one regularly assigned day off per week as a rest day, except when unavoidable emergency prevents furnishing relief. A regularly assigned

(b). Third Division, National Railroad Adjustment Board, is without jurisdiction to take cognizance of or to adjudicate the claim asserted in notice of President of American Train Dispatchers Association of July 9, 1945, without authorization, in legally sufficient form, by the purported claimant, as set forth in (a) next above.

For all or any of the reasons above recited, respondent carrier contends the Third Division, National Railroad Adjustment Board, must reject the submission proposed to be filed by the President of the American Train Dispatchers Association, or if such submission is not rejected, the case must be dismissed.

If the carrier is wrong with respect to the above reasons why this submission should be rejected or the case dismissed, which is not admitted, then, for yet another reason, the case must be dismissed, namely, that the petitioner, American Train Dispatchers Association, is attempting to split the cause of action. That this is true is plainly evidenced by the case covered by this Board's Award No. 2622, Docket TD-2567. The circumstances in that case were identical in every particular with the instant case. The name of claimant, place of employment and date were different. The petitioner was the same, American Train Dispatchers Association. The respondent in that case, as in the instant case, was one of the lines of railroads associated together, and, for convenience of reference, identified as "Southern Railway System."

The claim as handled with the carrier in the case covered by Award 2622 covered not only the claim submitted to the Board and disposed of by Award 2622, but also a further claim, identical in every respect to the claim presented in the instant case. See Carrier's submission in Docket TD-2567, Item 1, Page 2, and Carrier's Exhibit 2. See also Carrier's answer to employes' oral statement, dated February 16, 1944, beginning with Item No. 2 on Page 1, and running through Pages 2 and 3, all of which references are hereby made a part hereof, the same as though incorporated herein.

It is made clear by the references that, at all times, the petitioner in the instant case had in mind, and mentally in reserve, the case now proposed to be filed with this Board, and it is clearly an effort, therefore, to split the cause of action, such as was fully dealt with and rejected by your Board in its Award 1215.

If Third Division, National Railroad Adjustment Board, does not reject or dismiss the ex parte submission, proposed to be filed, on this petition, then respondent carrier requests that an oral hearing be conducted and respondent afforded an opportunity to argue the issues herein presented.

OPINION OF BOARD: Claimant was employed as a Trick Train Dispatcher with regularly assigned hours 7:00 A. M. to 3:00 P. M. daily except Saturday, Saturday being his regularly assigned rest day. On three Sundays, November 14, 1943, February 6, 1944, and February 20, 1944, Claimant was required to report for duty at 3:00 A. M., four hours prior to the expiration of the weekly rest day assigned to his position. He thereupon worked four hours on each of three rest days for which he was compensated at the time and one-half rate and the eight hours immediately following constituting his regular assignment for which he was paid at the pro rata rate. It is the contention of the Claimant that he is entitled to compensation at time and one-half for the last four hours worked under Rule 2 (a) of the Mediation Agreement, dated March 14, 1942, providing for such penalty pay for "time worked in excess of eight (8) hours on any day".

This is a companion claim to Docket TD-3126, Award No. 3146, and for the reasons given in the opinion in that Award, the claim should be denied.

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 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 as alleged in the present claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1946.