Award No. 6818
Docket No. TD-6726

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

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

(a) The Nashville, Chattanooga & St. Louis Railway, hereinafter referred to as "the Carrier," failed to properly apply the provisions of the Train Dispatchers' Schedule Agreement, effective April 1, 1945, particularly Article 7 (d) thereof, when on Friday, August 1, Monday, August 4 and Tuesday, August 5, 1952, it required Train Dispatcher B. E. Florence, employed in its Bruceton, Tennessee dispatching office, to perform extra train dispatcher service, and prevented him from working the time specified in his regularly assigned position which he had obtained in the exercise of seniority under the provisions of the Agreement rules, and

(b) By reason of its action as set forth in above paragraph (a) of this claim, the Carrier shall now compensate Claimant B. E. Florence for one day's pay at pro rata rate of his regular assignment for each day covered by this claim.

EMPLOYES' STATEMENT OF FACTS: There is in effect an agreement, effective April 1, 1945, between the parties to this dispute, covering Hours of Service and Working Conditions Governing Train Dispatchers. Said Agreement is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein. It will, hereafter, be referred to as "the Agreement."

This claim is based on the provisions of Article 7 (d) of the Agreement and reads as follows:

"(b) LOSS OF TIME CHANGING POSITIONS.

Loss of time on account of Hours of Service Law or in changing positions by direction of proper authority, shall be paid for at the rate of the position on which service was performed immediately prior to such change. Time lost in exercising seniority rights shall not be paid for."

During the preiod involved in this claim, Train Dispatcher B. E. Florence was regularly assigned to what is known as No. 1 relief dispatcher position

(4) The employes are attempting to add an additional penalty. There is no provision to be found in the agreement that provides for such penalty as the employes are here attempting to collect and which in effect amounts to triple damages.

In attempting to collect this additional penalty the employes undertake to place an interpretation on Article 7(d) which obviously was not the intent, as under such an interpretation the carrier would be required to pay two days pay for one day's work on each of the three dates involved.

The carrier therefore submits that as claimant suffered no loss there is no basis, contractual or otherwise, for the instant claim and the claim should be denied.

* * * *

All matters referred to herein have been presented, in substance, by the Carrier to representatives of the employes, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a regularly assigned relief dispatcher, beginning Friday, August 1, 1952, was directed to relieve the Assistant Chief Dispatcher working second trick and continued to so relieve him through August 7, 1952. Claim is filed for one day's pay at pro rata rate of the claimant's regular assignment on Friday, August 1, 1952, Monday, August 4, 1952, and Tuesday, August 5, 1952 when he worked second trick instead of 1st or 3rd trick as was designated in his regular relief assignment.

The reason for shifting claimant to filling the Assistant Chief Dispatcher's assignment was tat the latter was permitted to lay off because of a serious illness in his family. There was no extra or furloughed dispatcher available so the situation was met by having claimant work the Assistant Chief's job and having the incumbents of the positions which he relieved work their rest days at time and one-half. The laying off of the Assistant Chief Dispatcher for a cogent reason coupled with the non-availability of extra men in our opinion created an emergency. What we had to say in this respect in Award **6817** is equally applicable here.

Practically the same contentions are made by the parties here as were made in Award 6817. The only factual difference in this case and that is that on the date of claim, claimant worked tricks other than those encompassed in his regular assignment. He made more money than he would have made if he had worked is regular assignment by reason of the Assistant Chief rate being higher. Article 7(d) of the instant Agreemnt is identical with 4 (c) in the Agreement involved in Award 6817.

In Award 6817, we pointed out inconsistencies in the holdings of this Board and in the affirmation which the Organization has made with respect to the proper interpretation of the rule. We incline to the view that the rule was designed to protect employes against monetary losses sustained because of shifting positions at the direction of proper authority or because of operation of the Hours of Service Law. If by reason of such a shift an employe suffers monetary loss because of having become unavailable for service on his regular assignment the rule guarantees that he will not suffer loss of compensation. Such a conclusion is implicit in Award 3205. We do not consider that Rule 7 (a) permits the Carrier to arbitrarily require a regularly assigned employe to fill another assignment. There must be an emergency situation which justifies working him on other than his regular assignment. If as a result of so changing assignments the employe must be held off his regular assignment so that he makes less money than he would if he had worked his regular assignment he is entitled to be paid for the loss. Time worked on a rest day by direction of proper authority which renders the holder of the regular assignment unavailable to work his regular assignment

on the following day may not properly be claimed as a credit by the Carrier under the rule. To that extent we subscribe to the result reached in Award 2742. In the instant case it is clear that claimant suffered no monetary loss. It follows that a denial Award is in order.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1954.