Award No. 17256
Docket No. TD-17866

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(a) The Chicago, Rock Island and Pacific Railroad Company (hereinafter "the Carrier") violated the effective Agreement between the parties, Articles 3(a), 4(a) and 4(b) thereof in particular, by its failure to properly compensate the individual claimants named in paragraph (b) next following for services performed on the date or dates therein specified.

(b) The Carrier shall now be required to compensate each of the individual claimants in the amount representing the difference between what they were compensated and what they should have been compensated had Carrier correctly determined the rate of compensation applicable to service performed on assigned weekly rest days:

T. F. Herzog * April 24, 1968

R. G. German * April 17-18, 1968

J. F. Gorder # April 28, 1968

W. E. Murphy # April 27, 1968

R. L. Thompson # April 26, 1968

F. A. Bayliss # April 23, 1968

V. R. Beeson * April 27-28, 1968

* Assistant Chief Dispatcher Rate

Trick Dispatcher Rate

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and said Agreement is incorporated into and made a part of this submission the same as though fully set out.

The daily rate shall continue to be determined by multiplying the monthly rate by 12 and dividing the result by 261."

4. Following the signing of the above Agreement, in response to complaints filed with the National Railway Labor Conference by the American Train Dispatchers' Association that at least one Carrier had incorrectly used the above provision to change the computation of payments made to dispatchers for overtime service from the daily factor to hourly factor, the National Railway Labor Conference issued the following advice to its member railroads on March 12, 1965:

"We have been informed that at least one railroad party to this Agreement has issued instructions to the effect that if service is required of a train dispatcher on his rest day, the hourly factor should be used in computing his service on a punitive basis rather than the daily rate as specified in the schedule agreement. It should be understood that the basis for computing overtime or service performed on rest days as specified in the existing rule of the individual schedule agreements, i.e., on a minute, hourly or daily basis, is not changed by Article II of the February 2, 1965 Agreement."

5. This Carrier has had no other correspondence or contact from the National Railway Labor Conference concerning the above complaint of the American Train Dispatchers Association and upon checking with the National Railway Labor Conference as to what carrier was involved in the issuance of the above advice on March 12th was advised that it was **not** this Carrier. While the National Railway Labor Conference advice was issued on March 12, 1965 the General Chairman of the American Train Dispatchers Association on this property did not file any complaint with this Carrier regarding the issues here in dispute until July 31, 1965 (See Carrier's Exhibit "B").

6. For many years prior to, as well as subsequent to, the February 2, 1965 National Agreement, train dispatchers on this property have been compensated for overtime service and rest day service on the basis of one and one-half times the basis pro rata hourly rate determined by dividing the monthly rate by 174 hours (177 after the February 2, 1965 Agreement) as provided under Articles 2, 3 and 4 of the Dispatchers' Agreement in effect on this property. See dispatchers' rate sheets attached as Carrier's Exhibits "A-1" through "A-8" to this submission.

7. To avoid burdening the record, Carrier has not included copies of the correspondence presented on the property concerning this claim as it is anticipated the Employees will produce such correspondence as a part of its submission. However, Carrier will refer to various portions of this correspondence, as necessary, and will reproduce pertinent portions of same when appropriate. Carrier will also take exception in its rebuttal statement to any errors or omissions in the Employees' reproduction of such correspondence.

8. The procedures followed in the progression of this claim were timely and in accordance with the applicable rules in effect on this property and the Railway Labor Act, as amended.

(Exhibits not reproduced)

OPINION OF BOARD: This claim, brought in behalf of several employes, contends that Carrier did not apply the controlling rules of the

Agreement properly when computing pay for dispatchers working their regularly assigned positions on rest days.

In reading the Agreement, we find that the second Paragraph of Article 3 (a) clearly describes the situation presented to us:

> "Regularly assigned train dispatchers who are required to perform service on the rest days assigned to their position will be paid at the rate of time and one-half for service performed on either or both of such rest days."

The Organization argues that Article 4 (a) dictates that this time and one-half rate should be computed on the daily rather than hourly schedule. The article says:

> "Train dispatchers shall be monthly employes but the monthly compensation shall be computed on a daily basis."

Framers of the Agreement significantly provided "monthly compensation" shall be computed on a daily basis.

We next find that under Article 3(a) Note: 2, says:

> "Article 3(a) shall not provide compensation greater than that provided for in Article 2 (c)."

When we read Article 2 (c) we find:

> "A regularly assigned train dispatcher required to work a position other than his regular assignment, except an assigned train dispatcher who is used on the position of chief train dispatcher, shall be compensated therefor at one and one-half times the pro-rata hourly pay rate of the position worked; . . ."

We must find that through the limitation of Note 2 to Article 3 (a) computation of Claimants' pay is restricted to the "one and one-half times the pro-rata hourly rate" detailed in Article 2 (c).

Therefore, we deny the claim.

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

That the parties waived oral hearing;

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1969.

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