



Award No. 18374
Docket No. TD-18674

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter "the Carrier") violated the effective Agreement between the parties, Article III thereof in particular by its failure to compensate Train Dispatcher E. K. Cope at time and one-half rate applicable to service on rest days, for services performed on December 6 and 7, 1968 at Birmingham, Alabama.

(b) Because of said violation Carrier shall additionally compensate Claimant Cope in the amount representing the difference between the pro rata rate applicable which he was paid and the time and one-half rate which he should have been compensated.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated into this Ex Parte Submission as though fully set out herein.

For the Board's ready reference Article 11(a), Article 11(b) 1, Article III(a) 1 and 2, Article VIII(a) of said Agreement are here quoted in full:

"ARTICLE II.
HOURS OF SERVICE

(a) Basic Work Day.

Eight (8) consecutive hours shall constitute a day's work for train dispatchers.

(b) Overtime.

1. 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 III.
REST DAYS, VACATION AND RELIEF SERVICE

(a) Rest Days.

1. Each regularly assigned train dispatcher will be entitled and required to take two regularly assigned days off per week as rest

advised the Superintendent of Transportation that his decision was not acceptable.

Under date of March 11, 1969 the General Chairman addressed an appeal to Mr. T. P. Deaton, Director of Labor Relations.

The Director of Labor Relations, prior to conference on the matter, under date of April 29, 1969 wrote to the General Chairman declining the claim as appealed.

The General Chairman, on May 22, 1969, requested a conference on the claim. Under date of July 2, 1969 the Director of Labor Relations suggested conference be held Tuesday, July 8, 1969.

Conference was subsequently held on July 16, 1969 at which time the Director of Labor Relations reaffirmed his decision of April 29, 1969.

By letter dated August 17, 1969 the General Chairman advised the Director of Labor Relations that his decision was not acceptable and that he had referred the dispute to the President of the Claimant Organization for further handling.

Due to the time involved between the original denial dated April 29, 1969 and the date of conference July 16, 1969, it was mutually agreed to extend the time limit under Article VI(b) for a period of three (3) months.

All data and contentions herein set out have been the subject of discussion and/or correspondence between the parties or are known and available to the Carrier and therefore made part of this dispute.

CARRIER'S STATEMENT OF FACTS: The Claimant appeared as a witness for the Carrier at an investigation conducted with the train and engine crew on Train 133 of December 4, 1968 for allegedly passing southbound automatic interlocking signal displaying stop indication at Frisco-N. A. crossing, MP C-693.7, Jasper, Alabama at or about 10:24 A. M. without operating time release and without communicating with the train dispatcher as required by interlocking rules in the Rules of the Transportation Department.

The Claimant is a regularly assigned train dispatcher and the claim dates of Friday and Saturday, December 6 and 7, 1968 were the rest days of his assignment.

The Claimant was allowed eight hours at pro rata rate for each of the two days, and the claim before this Division is for overtime rate less time allowed.

OPINION OF BOARD: On the two days designated in the Claim — which were Claimant's assigned rest days — he traveled from Springfield, Missouri, to Birmingham, Alabama, to appear as a witness for Carrier, at its request, in an investigation and then returned to Springfield.

Carrier compensated Claimant as provided for in

"ARTICLE VIII. MISCELLANEOUS

(a) Attending Court, Coroner's Inquest, and Investigations or Hearings.

Train dispatchers taken away from their regular assigned duties at the request of Management to attend court, or to appear as

witnesses for the railroad at investigations, will be furnished transportation and will be allowed compensation equal to what they would have earned had such interruption not taken place. Dispatchers attending court or acting as witnesses outside of their assigned hours will be paid at the pro rata rate for the time devoted to such attendance, with a minimum of two (2) hours and a maximum of eight (8) hours for the time so consumed." (Emphasis ours.)

Petitioner contends that Claimant should have been compensated as provided for in

"ARTICLE III.

REST DAYS, VACATION AND RELIEF SERVICE

(a) Rest Days.

1. Each regularly assigned train dispatcher . . . who is required to perform service on the rest days assigned to his position, will be paid at rate of time and one-half for service performed on either or both of such rest days." (Emphasis ours.)

Article III(a) is a general provision relative to rate of pay for "service" performed on a rest day.

Article VIII(a) is a specific provision relative to Dispatchers who "at the request of Management" act as witnesses "outside of their assigned hours."

It is a principle of contract construction that a specific provision in an instrument prevails over a general provision. By application of this principle we find that Claimant was compensated to the full extent of his contractual entitlements.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1971.

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