

Award No. 18412
Docket No. TD-18623

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 IV (k) 1 thereof in particular, by its failure and declination to compensate Train Dispatcher L. O. Williams for time lost on his assigned position on December 8, 1968.

(b) The Carrier shall now be required to compensate Claimant Williams one (1) day's compensation at pro rata rate applicable to Position No. 35 December 8, 1968 because of Carrier's violation of the Agreement referred to in paragraph (a) above.

EMPLOYES' 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 IV (k) 1 and Article IV (l) 1 of said Agreement are here quoted in full:

"ARTICLE IV
Seniority

(k) Temporary Vacancies

1. Temporary vacancies or new positions of sixty (60) days' duration or less may be filled without bulletining as hereinafter provided in this Section (k). Regularly assigned train dispatchers in the seniority district will be permitted to temporarily transfer to such temporary vacancies or new positions, or to positions made vacant by such temporary transfers, in accordance with their respective seniority; the position finally made vacant by such rearrangement of force will then be assigned to the senior qualified extra train dispatcher on the seniority district.

ant Organization and that he had referred the dispute to the President of the Claimant Organization for further handling.

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 are therefore made part of this dispute.

CARRIER'S STATEMENT OF FACTS: The assignment of Trick Train Dispatcher No. 35 is from 11:30 P.M. - 7:30 A.M. Friday through Tuesday with Wednesday and Thursday rest days. There was a temporary vacancy on this assignment from December 2 to and including December 15, 1968.

The claimant, a guaranteed assigned dispatcher was used to fill the temporary vacancy, beginning Monday, December 2, 1968 and continuing through Sunday, December 15, 1968 except, however, because of the absence of an available extra train dispatcher he was used to work Trick Train Dispatcher Assignment No. 40 7:59 A.M. - 3:59 P.M. on Thursday, December 5, 1968, and was relieved from performing service on Trick Train Dispatcher Assignment 35 on Sunday, December 8, 1968 on account of having performed compensated service as a train dispatcher on five days in his work week beginning Monday, December 2, 1968.

The Organization requests in Claim 1 that the claimant be allowed time and one-half rate less straight time rate allowed for services rendered by him on December 5, 1968 and in Claim 2 that he be allowed a day's pay at pro rata rate on Sunday, December 8, 1968 to compensate him for an alleged loss of time on Assignment No. 35 that date.

OPINION OF BOARD: This is a companion case to the one in Docket TD-18620 wherein this Board sustained a claim for the difference between pro-rata and overtime pay for services rendered by this Claimant on his rest day, Thursday, December 5, 1968. Here, the Claimant is asking for eight (8) hours pay for December 8, 1968 because the Carrier blanked his position on that date.

Employees are not a party to the Forty Hour Work Agreement. Hence the rules of that Agreement and the interpretations thereof are not applicable.

Paragraph (2) of the September 25, 1965 Agreement prescribes that Guaranteed Assigned Dispatchers be guaranteed a "minimum of five (5) days for each week, Monday through Sunday * * *" It does not guarantee such an employee forty (40) hours of pay in any particular five (5) days, nor does it obligate the Carrier to work such an employee all of the five (5) scheduled work days, excluding rest days, in the bulletined position. The Carrier may blank any or all work days in the week for such a guaranteed employee, but is obligated to pay him for at least five (5) days which, under Article II (a), amounts to forty (40) hours.

There is a distinct difference in the meaning and intent of the provisions of the September 25, 1965 Memorandum of Agreement as it applies to the right of the Carrier to blank an employee's work day and as it applies to pay for work on a guaranteed employee's scheduled rest day. Neither the Memorandum of Agreement nor the rules in the schedule agreement limits Carrier's right to suspend work to absorb overtime. Premium pay for work by this guaranteed employee on his rest day was sustained in Award No. 18411, because of the conditions and circumstances relating to his rest days.

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 the 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 26th day of February 1971.