



Award No. 18419
Docket No. TD-18768

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The St. Louis-San Francisco Railway Company (hereinafter "the Carrier") violated the effective Agreement between the parties, Article III(a) thereof in particular, by its failure and declination to compensate Train Dispatcher L. H. Bauer at time and one-half for service performed on May 2, 1969.

(b) Carrier shall now additionally compensate Claimant Bauer for the difference between pro rata rate and time and one-half rate applicable to Chief Dispatcher position for rest day service performed on May 2, 1969.

EMPLOYES' STATEMENT OF FACTS: The existing Agreement between the parties is incorporated herein by this reference.

For the Board's ready reference Article 111(a) of said Agreement is here quoted in full:

"ARTICLE II.

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 days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five days per week. Any 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.

regular relief assignment No. 2 and hence service rendered by him on that day was compensable at overtime rate.

CLAIM 3

The same Claimant is involved in this dispute as in Claims 1 and 2, above, and the only factual difference between this claim and Claim 2 is that overtime rate is also claimed on behalf of the Claimant for the second rest day instead of the first rest day of his regular relief assignment No. 2.

CLAIM 4

The Claimant in this dispute (and succeeding Claim 5) is the regular incumbent of Relief Assignment No. 8 and, as such, he performs rest day relief work each week as follows:

Position	Assigned Hours	Work Week
No. 30 - Trick Train Dispatcher	7:30AM- 3:30PM	Sat&Sun
No. 31 - Trick Train Dispatcher	3:30PM-11:30PM	Mon&Tues
No. 32 - Trick Train Dispatcher	11:30PM- 7:30AM	Wednesday
	Rest Days	Thurs&Fri

Beginning Saturday, April 12, 1969, the Claimant fulfilled his regular relief assignment for four consecutive days.

In this dispute the Claimant requested and was granted permission to fill a two-day vacancy Thursday and Friday, April 17 and 18, 1969 on Excepted Chief Dispatcher Position No. 4, but in order for the Claimant to make himself available for relief service on Excepted Chief Dispatcher Position No. 4, Thursday, April 17, it was necessary for him to absent himself from his regular relief assignment on Wednesday, April 16, 1969, and in so doing he did not perform relief service commencing 11:30 P.M. that day on Trick Train Dispatcher Position No. 32.

The General Chairman presented on behalf of Claimant monetary claim for overtime rate less straight time rate allowed predicated upon the theory that the service rendered by the Claimant on Excepted Chief Dispatcher Position No. 4 on Thursday, April 17, 1969 was one of the assigned rest days of his regular relief assignment No. 8 and compensable at the overtime rate.

CLAIM 5

This dispute involves the same Claimant as in Claim 4, and the only factual difference between the two claims is that this dispute involves claim for overtime rate on the second rather than the first rest day of his regular relief assignment No. 8.

OPINION OF BOARD: Claimant was regularly assigned to relief assignment No. 2. Thursday and Friday were his rest days on said position. The basis of this claim is for working Excepted Chief Dispatcher Position No. 4 on Friday, May 2, 1969, one of his rest days on regular relief assignment No. 2, wherein Claimant is claiming that he should have been paid at the overtime rate on the date in question rather than at the pro-rata rate.

Claimant strongly relies on a letter, dated February 20, 1952, from Carrier's Director of Personnel, C. P. King to General Chairman W. V. Claybourn, wherein Mr. King stated that a train dispatcher relieving an Excepted Chief Dispatcher will be paid at the overtime rate for work performed on the rest day or days assigned to his position.

Carrier asks this Board that said letter, marked Exhibit TD-1 be stricken from the record and not considered by this Board in deciding this dispute for said letter not having been discussed or placed in issue or relied upon by the Organization in the handling on the property by the parties herein.

As we said in Award No. 18418, the docket does not contain any correspondence or evidence showing what issues or contentions were actually raised on the property and remanded same back to the property for further handling by the parties in regard to showing what issues or contentions or exhibits were actually discussed and raised by the parties on the property.

Therefore, we must remand this dispute back to the property for further handling by the parties herein in regard to establishing proof as to what was or was not contended or discussed or raised on the property.

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.

AWARD

Claim remanded to the property for further handling in accord with the Opinion.

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.