

 Award No. 18434
Docket No. TD-18856

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
SOUTHERN PACIFIC TRANSPORTATION COMPANY
TEXAS AND LOUISIANA LINES**

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

(a) The Southern Pacific Company — Texas and Louisiana Lines — (hereinafter "the Carrier") violated the effective Agreement between the parties, Rule 6 thereof in particular, by its failure and declination to compensate Train Dispatcher W. R. Earle at the time and one-half rate for service performed September 12, 1969, a regularly assigned rest day.

(b) Carrier shall now additionally compensate Claimant Earle for the difference between pro rata rate and time and one-half rate applicable to his assigned position for rest day service performed on September 12, 1969.

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 ready reference, Rule 6 of the Agreement is here quoted in full text:

"RULE 6

Each regularly assigned train dispatcher will be entitled and required to take two (2) 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 (5) days per week.

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

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RULE 23

Train Dispatchers who at the request of the Company attend court or appear as witnesses for the carrier will be furnished free transportation, and will be compensated at the day rate of their assignment, or if extra, at trick train dispatcher's daily rate for each day so engaged with a maximum of eight (8) hours for each calendar day, and in addition, necessary actual expenses while away from headquarters. Any fee or mileage accruing will be assigned to the carrier."

Claim was made for payment of eight (8) hours at time-and-one-half rate instead of at pro rata rate as allowed. The claim was declined, was progressed in the usual manner, and is now properly before this Division for decision. Correspondence in connection with the handling of this case on the property is attached as CARRIER'S EXHIBIT "A."

(Exhibits not reproduced.)

OPINION OF BOARD: Upon request by Carrier, Claimant attended an investigation as a witness at Lufkin, Texas on one of his regularly assigned rest days, Friday, September 12, 1969. He was compensated by Carrier at the pro-rata rate of his assignment. The Organization maintains that Claimant should be compensated at the time and one-half rate and cites Rule 6 of the Agreement as the basis for this Claim, the pertinent part being:

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

Carrier contends that the above quoted portion of Rule 6 applies only when the service performed on a rest day is "train dispatching service" as defined in Rule 2. Carrier further contends that Rule 23 is controlling in this dispute and requires payment for the involved service at the daily rate — not the penalty rate.

This Board finds that the more recent and better reasoned Awards uphold the contention of the Organization. Rule 23 merely requires Carrier to compensate Train Dispatchers at the daily rate of their assignment if called as a witness. If the day they are called as a witness falls on their rest day, their daily rate under Rule 6 is time and one-half. This Board also finds that Claimant was performing a "service for and on behalf of Carrier when he appeared as a witness on Carrier's request in a case not involving his own position and such "service" is construed to be "work." See Awards Nos. 17316 (McCandless), 10062 (Daly), 15729 (Ives), 16778 (Cartwright), 17164 (Jones) and 14124 (Hamilton). Therefore, this claim will be sustained.

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 Agreement was violated.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 12th day of March 1971.

CARRIER MEMBERS' DISSENT TO AWARD 18434, DOCKET TD-18856 (Referee Ritter)

This award runs contrary to the interpretation which this Board has traditionally given to rules covering "work" or "service," and to rules allowing pay at the "rate of his position." In Award 12408 (Dolnick) we said:

"* * * The 'rate of his position' can only mean the pro rata rate. The findings and conclusions reached in Award 10252 are affirmed."

In early Award 2508 (Thaxter) which has been followed repeatedly in subsequent awards, the Board said:

"* * * The majority of awards hold that the rules of an agreement relating to work do not cover the performance of such special services as time spent for examinations, attending court or investigations, and meetings and conferences would be in the same class. Awards 134, 409, 487, 605, 773, 1032, 1816, 2132."

There is no question that the extracts we have quoted represent the majority view; and when due consideration is given to traditional handling of such matters in this industry, they represent the better reasoned view.

**G. L. Naylor
R. E. Black
W. B. Jones
P. C. Carter
H. F. M. Braidwood**

**LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT
AWARD 18434, DOCKET TD-18856**

The dissent very conveniently overlooks the controlling agreement rule. The award cites the more recent Opinions of the Board where the agreement makes provisions for the proper compensation for using an employee's agreement-provided rest days.

**George P. Kasamis
G. P. Kasamis
Labor Member**