



Award No. 18541
Docket No. TD-18634

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, 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, Articles II and III thereof in particular by its failure to compensate Train Dispatcher A. H. Taff at time and one-half rate for service in excess of eight (8) hours performed on position of Chief Dispatcher on November 13, 1968, and for services performed on rest day, November 14, 1968, in Carrier's Springfield, Missouri train dispatching office.

(b) Because of said violations Carrier shall additionally compensate Claimant Taff in the amount representing the difference between the pro rata rate applicable to Chief Dispatcher position 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 II(a), Article II(b)1 and Article III(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 over-

The Claimant worked his regular assignment on Tuesday, November 12, 1968, relieving on Night Chief Dispatcher Position No. 2, 3:00 P.M. until 11:00 P.M. The regular occupant of Excepted Chief Dispatcher Position No. 1 was absent Wednesday and Thursday, November 13 and 14, 1968.

The Excepted Chief Dispatcher does not have daily assigned hours, but, in practice, he is generally on duty during the first shift.

The Claimant requested and was granted permission to relieve the Excepted Chief Dispatcher on Wednesday, November 13, 1968, instead of working his regular assignment as Second Trick Night Chief Dispatcher that day, and also continued to relieve the Excepted Chief Dispatcher on Thursday, November 14, 1968, which was one of the rest days of the Claimant's regular assignment.

The Claimant was compensated at the pro rata daily rate of pay of the Excepted Chief Dispatcher position for services performed thereon November 13 and 14, 1968. The claim before this Division is that the Claimant be additionally compensated for the difference between overtime rate and straight time rate for services rendered as Excepted Chief Dispatcher on each of the two days.

OPINION OF BOARD: Claimant was the regular occupant of Relief Assignment No. 1 in Carrier's Springfield, Missouri, dispatching office. On November 13 and 14 the Chief Dispatcher, Position No. 1, was absent. It is Claimant's regular assignment to fill the rest days of this position and even *though on this occasion the rest days fell on other than the usual Saturday and Sunday* he requested and was allowed to perform the work. Presumably he exercised a choice.

On Tuesday, November 12, Claimant worked his regular assignment relieving Night Chief Dispatcher No. 2, beginning at 3 P.M. and ending at 11 P.M. In order to fill Position No. 1 vacancy, he worked from 7 A.M. to 3 P.M. on November 13. Thus, during a 24-hour period, he worked 16 hours. His claim is for the time-and-one-half rate for the second eight-hour period. On November 14, he contends he should have been paid at the overtime rate due to performing service on a rest day of his regular assignment.

The Organization contends that Articles II and III of the Agreement were violated by this work arrangement. It is, however, the contention of the Carrier that Letter Agreement dated November 19, 1952, controls.

Pertinent part of that Letter says:

"2. On the days Train Dispatcher is relieving excepted Chief Dispatcher, it is understood Train Dispatcher takes the responsibility for proper performance of Chief Dispatcher's work, and that his working conditions, including hours of service, will be the same as apply to Chief Dispatcher."

The Organization believes a letter dated earlier, February 20, 1952, concerning the settlement of a claim and setting out certain circumstances, should be applied and the claim allowed. This letter was dated in February, the one quoted above in November.

We cannot overlook the fact that the Claimant chose to work the assignment for which he now makes a claim. We cannot ignore prior awards on this point, i.e., 9852, 17791.

Award No. 4 of Public Law Board No. 300 is cited by the Carrier as controlling. We do find, as the Organization contends, some difference in the circumstances. In that case there was an emergency and the Claimant therein was held on duty beyond the eight hours. That Award tells us:

"This chief dispatcher assignment is excepted from the Agreement and the Carrier can require the regular occupant of that position to work overtime without overtime pay. From the letter of Agreement the Organization has agreed that employees who fill that relief position accept the working conditions and the hours of service the same as it would apply to the chief dispatcher. . . ."

Though the specific facts differ, we believe the basic issue is the same in Award 4 and the claim before us.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

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