

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23240
Docket Number CL-22802

Richard R. Rasher, Referee

Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

I
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8707) that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when on November 1, 1977, it required Train Dispatcher C. F. Steele to perform overtime **work** in transferring business to the oncoming dispatcher and refused to compensate him therefor.
2. Carrier shall now be required to compensate Train Dispatcher **C. F. Steele** for **one (1) hour** and ten (10) minutes at the overtime rate of pay for November 1, 1977.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when on September 25, 26, **27**, 28, 29, October 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, **17, 18**, 19, 20, 23, 24, 25, 26, 27, 30, 31, November 1, 2, 3, 6, 7, 8, 9, 10, 13, 14 and 15, 1977, it required Train Dispatcher P. E. Oliver, Jr., to perform overtime work in transferring business to the oncoming dispatcher and refused to compensate him therefor.

CLAIM NO. 2

2. Carrier shall now be required to compensate Train Dispatcher P. E. **Oliver, Jr.**, at the time and one-half rate of pay as follows:

September 25, 1977 - 25 minutes	September 26, 1977 - 1 hour
September 27, 1977 - 25 minutes	September 28, 1977 - 30 minutes
September 29, 1977 - 35 minutes	October 2, 1977 - 20 minutes
October 3, 1977 - 30 minutes	October 4, 1977 - 25 minutes
October 5, 1977 - 40 minutes	October 6, 1977 - 35 minutes
October 9, 1977 - 20 minutes	October 10, 1977 - 45 minutes
October 11, 1977 - 30 minutes	October 12, 1977 - 35 minutes
October 13, 1977 - 35 minutes	October 16, 1977 - 25 minutes
October 17, 1977 - 25 minutes	October 18, 1977 - 40 minutes
October 19, 1977 - 35 minutes	October 20, 1977 - 30 minutes
October 23, 1977 - 20 minutes	October 24, 1977 - 25 minutes
October 27, 1977 - 40 minutes	October 30, 1977 - 20 minutes
October 31, 1977 - 30 minutes	November 1, 1977 - 30 minutes
November 2, 1977 - 35 minutes	November 3, 1977 - 1 hour 20 minutes
November 6, 1977 - 25 minutes	November 7, 1977 - 30 minutes
November 8, 1977 - 30 minutes	November 9, 1978 - 35 minutes
November 10, 1977 - 40 minutes	November 13, 1977 - 20 minutes
November 14, 1977 - 20 minutes	November 15, 1977 - 35 minutes

CLAIM NO. 3

1. Carrier violated the Agreement between the parties when on November 2, 3, 4, 7, 8, 9, 10, 11, 14 and 15, 1977. it required Train Dispatcher R. R. Frye to perform overtime work in transferring business to the oncoming dispatcher and refused to compensate him **therefor**.
2. Carrier shall now be required to compensate Train Dispatcher R. R. Frye at the time and one-half rate of pay as follows:

November 2, 1977 - 55 minutes
November 3, 1977 - 50 minutes
November 4, 1977 - 40 minutes
November 7, 1977 - 45 minutes
November 8, 1977 - 30 minutes
November 9, 1977 - 40 minutes
November 10, 1977 - 30 minutes
November 11, 1977 - 30 minutes
November 14, 1977 - 40 minutes
November 15, 1977 - 45 minutes

OPINION OF BOARD: **The Claimants, represented by BRAC, were assigned as Train Dispatchers at Bluefield, West Virginia. The instant claims arose after the Carrier refused to compensate the train dispatchers at the overtime rate for transfers of information made by the Claimants, after eight hour shifts, to train dispatchers coming on duty for their next shifts.**

The Carrier's refusal to compensate the Claimants at the overtime rate was based on its application of Rule 29 -- BASIC DAY, and Rule -- TRAIN DISPATCHERS ATLANTIC AND POCAHONTAS REGIONS. Those Rules read in pertinent part as follows:

Rule - 29

- (a). Unless otherwise provided in this Agreement, eight consecutive hours on duty, exclusive of meal period, shall constitute a day's work.**

Rule - 69

- (d). Eight consecutive hours, with necessary time for making transfers, will constitute a day's work for train dispatchers. (emphasis added).**

Rule 69(d) first appeared in an Agreement between the Carrier and the Order of Railroad Telegraphers, effective March 1, 1907, reading as follows:

"Eight consecutive hours with necessary time for making transfers will constitute a day's work for Trick Train Dispatchers."

When the clerk and telegrapher agreements on this Carrier were consolidated into one agreement effective April 1, 1973, certain rules were retained while others were eliminated. Rule 69 is one of the retained rules.

A reading of Rules 29 and 69(d) leads to but one interpretation. Rule 69(d) is a specific exception to general Rule 29. Rule 69(d) is explicit; it does not provide overtime pay for making transfers, even if those transfers are made after a shift of eight hours. The Organization's argument that the Carrier violated other general provisions in the contract is not persuasive. In the face of Rule 69, a special rule governing the basic day of train dispatchers. In an agreement, where there are general and special provisions, the special provisions prevail over the general rules. See Awards 14242, 18374, 20688. These findings do not address the question of whether the transfers involved were beyond the scope of the normal duties of the involved

dispatchers as there is insufficient evidence in the record to reach any such conclusion. Accordingly, this claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1981.

