

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23393
Docket Number TD-22864

Robert A. Franden, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association
{ Fort Worth and Denver Railway Company

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

(a) The Fort Worth and Denver Railroad Company (hereinafter referred to as "the Carrier"), violated the Agreement in effect between the parties, Memorandum of Agreement signed October 3, 1968 thereof in particular, by failing to compensate K. A. Preston eight (8) hours at straight time rate of first clerk operator September 10, 1977.

(b) Carrier shall now be required to compensate claimant K. A. Preston for wage loss in accordance with the agreement provisions.

OPINION OF BOARD: Claimant held a regular assignment as First Operator Clerk at North Yard with assigned hours of 8:00 a.m. to 4:00 p.m. On September 9, 1977, Claimant exercised his seniority as an extra train dispatcher and worked as such between the hours of 3:00 p.m. and 11:00 p.m. Claimant was released from his position as extra train dispatcher at the completion of his shift on September 9, 1977, and would normally have returned to protect his regular assignment at 8:00 a.m. on September 10, 1977, but was prohibited from doing so due to the Hours of Service Law.

It is the position of the Organization that under Rule 6(B) of the Agreement between the parties, the Claimant was entitled to be compensated for service on September 10, 1977, at the rate of First Clerk Operator for 8 hours. Rule 6(B) reads as follows:

"Loss of time on account of the Hours of Service Law or in changing positions by direction of proper authority shall be paid for at the rate of the position for which service was performed immediately prior to such change. This does not apply in cases of transfers account employees exercising seniority."

The Carrier takes the position that in that the Hours of Service Act was applicable, the Claimant was unavailable for service, and hence could not properly claim the compensation requested.

We have considered a case virtually identical to the instant one in the matter resolved in our Award No. 20687. As in that case, we believe that the Rule is applicable and that the Claimant is entitled to be compensated.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulus

Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1981.

