

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24875
Docket Number TD-24208

Referee Martin F. Scheinman

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Burlington Northern Inc.

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

(a) Burlington Northern Inc. (hereinafter referred to as "the Carrier") violated the current Agreement (effective on March 3, 1970), including Article 2(e) and Article 18, when the Carrier refused and continues to refuse to pay assigned train dispatcher M. L. Rohr (hereinafter referred to as "the Claimant") for loss of the opportunity to perform train dispatcher service on December 21 and December 22, 1979 on the hours of the Claimant's regularly assigned train dispatcher position due to the fact that the Claimant was required by direction of proper authority of the Carrier to fill another assignment not acquired by the Claimant through the exercise of the seniority provisions of the Agreement and which assignment did not include working days on the days herein claimed.

(b) The Carrier violated the current Agreement between the parties, including Article 3(a), Article 3(b) and Article 3(c), when the Carrier refused and continues to refuse to compensate the Claimant for the difference between the straight time rate which the Claimant was paid and time and one-half to which the Claimant was entitled for service performed on December 23 and December 24, 1979 which were the two regularly assigned rest days of the assignment which was the Claimant's property right because the Claimant acquired it through the seniority provisions of the contract Agreement and on which the Claimant was prevented from serving due to the fact that by direction of proper authority of the Carrier the Claimant was caused to serve on another position, not the Claimant's property and which required service on the days claimed herein.

(c) (1) The Carrier shall now be required to pay the Claimant at the straight time rate of pay of the Claimant's train dispatcher assignment for each day on December 21 and 22, 1979 and,

(2) The Carrier shall now be required to pay the Claimant the difference between the straight time rate of pay allowed and the time and one-half rate to which the Claimant was entitled on December 23 and December 24, 1979 on which the Claimant was required to perform service on the rest days of the Claimant's own position while serving on an assignment not the Claimant's own.

OPINION OF BOARD: The relevant facts of this claim are not in dispute. At the time this controversy arose, Claimant M. L. Rohr was regularly assigned as a train dispatcher third trick, at Carrier's Minneapolis, Minn. facility. His assigned hours were 12:00 a.m. to 8:00 a.m. with rest days of Sunday and Monday.

On December 14, 1979, Carrier instructed Claimant to protect the third trick Assistant Chief Dispatcher Position normally occupied by E. N. Olson. Beginning December 14, 1979 through December 25, 1979, Claimant worked Olson's position. His work and rest days, when compared to those on his regular job, may be summarized as follows.

	<u>Regular Job</u>	<u>Temporary Job</u>
Wed. - Dec. 19	Work Day	Work Day
Thurs. - Dec. 20	Work Day	Work Day
Fri. - Dec. 21	Work Day	Rest Day
Sat. - Dec. 22	Work Day	Rest Day
Sun. - Dec. 23	Rest Day	Work Day
Mon. - Dec. 24	Rest Day	Work Day
Tue. - Dec. 25	Work Day	Work Day

Claimant was paid for five days of work at the straight time rate of the Asst. Chief Dispatcher for the period December 19, 1979 through December 25, 1979.

The Organization contends that Carrier violated the Agreement when it failed to compensate Claimant at the straight time rate for December 21 and 22, which were work days on his regular assignment and at the overtime rate for December 23 and 24, which were rest days on his regular assignment. The rules pertinent to this dispute read, in relevant part, as follows:

"ARTICLE 2

(e) SERVICE ON POSITIONS OTHER THAN SENIORITY CHOICE

An assigned train dispatcher required to work a position other than the one he obtained in the exercise of his seniority, except as assigned train dispatcher who is used on the position of chief dispatcher, or assistant chief dispatcher, shall be compensated therefor at the overtime rate of the position worked, however, except as provided in Article 18, no additional payment shall be made to such train dispatcher due to not having worked his regular assignment.

ARTICLE 3

(b) SERVICE ON REST DAYS

A regularly assigned train dispatcher 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...

ARTICLE 18

LOSS OF TIME IN CHANGING POSITIONS

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

The Organization argues that, Article 3(b) requires that Claimant be paid at the time and one-half rate for December 23 and 24, his normal rest days. Claimant was obviously required to work those days as a condition of his temporary assignment. Those days were the "rest days assigned to his position". Therefore, in the Organization's view, Rule 3(b) mandates that Claimant be paid at the time and one-half rate for December 23 and 24, 1979.

With respect to December 21 and 22, the Organization asserts that Article 18 requires that Claimant be paid at the straight time rate for those days. Article 18 requires that employees changing positions as a result of a proper directive shall be paid for any loss of time resulting from the change. Here, Claimant was ordered to change his position in December 1979. December 21 and 22 were normal work days on his prior assignment. However, they were rest days on his temporary assignment. Thus, according to the Organization, Claimant lost time as a result of not having worked on his regular work days and should be compensated for them.

Carrier, on the other hand, maintains that Article 2(e) governs this dispute. That section, in Carrier's view, is explicit. It specifically precludes any additional payments to train dispatchers who are assigned to the position of Assistant Chief Dispatcher. Here, Claimant was so assigned. Thus, Carrier argues, the specific mandate of Rule 2(e) must take precedence over the general rules cited by the Organization. Accordingly, Carrier asks that the claim be denied.

After careful review of the facts and record evidence, we conclude that the Organization's claim for compensation at the time and one-half rate for December 23 and 24 must be denied, while its claim for compensation at the straight time rate for December 21 and December 22 must be granted. This is so for a number of reasons.

First, Article 2(e) is explicit. Except as limited by Article 18, it provides that Train Dispatchers assigned as Assistant Chief Dispatchers will not be compensated at the time and one-half rate while they occupy the Assistant Chief Dispatcher position.

Second, the Organization's reliance upon Article 3(b) is misplaced. It is true that Claimant did work seven consecutive days during the period December 23, 1979 through December 29, 1979. However, the last four of these are caused by Claimant's return to this regular job in which, apparently, two rest days were provided at the conclusion of his five working day period.

Moreover, Article 3(b) simply cannot apply to this dispute. Article 2(e) contains but one limitation upon Carrier's right to assign Claimant as it did, without extra compensation therefore. That limitation is found in Article 18 which has no bearing upon Claimant's demand for compensation at the time and one-half rate for December 23 and 24. Thus, this part of the claim must be denied, even though Claimant returned to his regular assignment on December 26, 1979.

Finally, we also conclude that Claimant is entitled to be compensated at the straight time rate for December 21 and 22, rest days on his temporary position, but work days on his regular assignment. While Article 2(e) provides that there will be no additional compensation for Train Dispatchers who are assigned as Assistant Chief Dispatchers, Article 18 is specifically exempted from the terms of Article 2(e). The plain language of Article 2(e) contains this exception "except as provided in Article 18." Thus, in our view, Claimant must be appropriately compensated if he met the conditions of Article 18. We believe that he did.

Here a proper authority ordered Claimant to assume the duties of an Assistant Chief Dispatcher for a seven day period in December 1979. If Claimant had been working his regular assignment, he would have been paid for December 21 and 22, his regular work days. However, account of his being temporarily transferred to another position, Claimant was required to observe December 21 and 22 as rest days. Thus, he "lost time" as a result of his change in position and must be appropriately compensated. Accordingly, part (a) of the claim is sustained while (b) is denied. Claimant is to be compensated in conformity with part (c) (1) of the claim.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984