

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDIVISION

Award Number 26215
Docket Number TD-26203

John E. Cloney, Referee

(American Train Dispatchers Association

PARTIES TO DISPUTE: (

(Seaboard System Railroad

STATEMENT OF CLAIM:

"CLAIM #1 - CARRIER FILE 10-7(83-6) 13

Claim of C. E. Mattox under Article VII(d)(3) for time lost from regular assignment in other service on December 5-6 and December 10-11, 1982 to perform service as extra train dispatcher.

CLAIM #2 - CARRIER FILE 10-7(83-9) 13 and C2

Claim of G. W. Deason under Article VII(d)(3) for time lost from regular assignment in other service on December 11-12, and December 17-18, 1982 to perform service as extra train dispatcher.

CLAIM #3 - CARRIER FILE 10-7(83-24) C2

Claim of C. E. Mattox under Article VII(d)(3) for time lost from regular assignment in other service on January 29-30, 1983 to perform service as extra train dispatcher."

OPINION OF BOARD: These three Claims are for amounts allegedly due two separate Claimants who hold regular Clerk positions and who performed service as Extra Train Dispatchers. The dispute grows out of a difference as to the meaning of the following portions of Article VIII of the Agreement:

"

(d) Loss of Time Changing Positions

(1) : : : :

(2) : : : :

(3) When extra train dispatchers are called from their regular assignments in other service to perform service as train dispatcher, they will be paid the rate of the position they fill in dispatcher service, but if the change from one service to the other requires them to lose time account of the Hours of Service Law, their compensation shall not be less than it would have been had they continued on their regular assignments in such other service.

Example: A telegrapher holding a regular assignment as such paying \$3.00 per hour is called to perform extra service as train dispatcher for one day, but thereby of a necessity loses **two** days **from** his regular telegrapher position. He earns, as dispatcher, \$33.00; his rate on his regular position **from** which he lost **two** days was \$24.00 per day. He will be paid \$48.00 instead of \$33.00. If any travel pay is earned under Article **IV(h)(2)** the amount earned will be applied toward making up the difference of \$33.00 and \$48.00."

The facts of the three Claims, though similar, are not identical.

In Claim Number 1 Mattox, a regular Crew Clerk, with hours of **11:00 P.M. - 7:00 A.M.**, rest days Tuesday and **Wednesday**, worked Extra Train Dispatcher service on Friday, December 3 and on Saturday, December 4 **from 11:59 P.M. until 7:59 A.M.** **Due** to the Hours of Service Law he was required to lose time **from** his regular assignment on Sunday, December 5 and Monday, December 6 in order to work **3:59 P.M. to 11:59 P.M.** as a Train Dispatcher on **December 6**.

After the Train Dispatcher **assignment** on December 6 he observed his regular **Tuesday** and **Wednesday** rest days. He returned as Train Dispatcher on Thursday, **December 9 from 11:59 P.M. to 7:59 A.M.** He was again required to lose time **from** his regular assignment on Friday, December 10 and Saturday, **December 11 to work** as a Train Dispatcher on Saturday, **December 11. On** Sunday, December 12 and Monday, **December 13** he again worked as a Train Dispatcher.

Claimant's rate of pay in his regular **assignment** was \$94.17 daily, while his daily rate as a Dispatcher was \$124.49.

The Organization argues Mattox lost time **from** his regular **assignment** on Sunday, December 5 and on Monday, **December 6** in order to **work** the Train Dispatcher shift **from 3:59 P.M. to 11:59 P.M.** on December 6 and thus lost **two** days' pay totaling \$188.34 in order to earn one day's pay of \$124.49 and is therefore entitled to \$63.85 compensation. The same is true of **December 10** and December 11, entitling him to another \$63.85 for a total of \$127.70. Carrier points out that during the period involved Mattox would have earned \$847.53 as a Clerk but earned \$871.43 as a Dispatcher and concludes nothing is due.

Claim **Number 3** also involves Mattox. He **worked** his regular assignment on Thursday, January 27. On Friday, January 28 he worked as a Train Dispatcher **from 3:59 P.M. to 11:59 P.M.** He was then required to lose time **from** his regular assignment on Saturday, January 29 and Sunday, January 30 in order to **work from 7:59 A.M. to 3:59 P.M.** as a Train Dispatcher on Sunday, January 30. On Monday, January 31 he worked as Train Dispatcher. On February 1 and 2 (his rest days) he **worked** as a Train Dispatcher as **well** as on February 3, 4 and 5 returning to his regular assignment on February 6. **Thus** the Organization argues Mattox lost time on January 29 and 30 in order to **work** as a Train Dispatcher on January 30 for which he received \$128.10. As his daily rate was \$96.89 he lost \$193.78 to earn one day's pay of \$128.10 for a loss of \$65.68.

Carrier again contends **Mattox** was paid more in the aggregate during the **period** than he **would** otherwise have **earned** and is entitled to nothing.

Claim **Number 2** involved **Towerman Deason** who regularly **worked** 3:00 P.M. to 11:00 P.M. with Monday and Tuesday rest days. He was required to lose time on December 11 and December 12 in order to **work** 7:00 A.M. - 3:00 P.M. **December 12** as a Train Dispatcher. **December 13** and **December 14** were rest days and on **December 15** and **December 16** he worked his regular **assignment**. He was again required to lose time as **Towerman** on **December 17** and December 18 in order to work as **Train Dispatcher** **from** 11:00 P.M. on **December 17** until **7:00** A.M. on December 18.

Deason's rate was \$99.07 per day. He received \$124.49 **per** day as a Train Dispatcher. Thus, argues the Organization he lost **two** days at \$99.07 on December 11 and 12 and again on **December 17** and 18 in order to **earn** \$124.49 on **December 12** and December 17. **Again** Carrier maintains **Deason** earned more in the **period** than he **would** have had he **worked** his regular assignment only. **The** Organization ^{argues} the Hours of Service Law deals with 24 hour periods and therefore Article **VII(d)(3)** references to loss of time also refers to a 24 hour period and not to an aggregate period.

The question arose on this property at least once before. In Third Division Award 18270 Carrier **claimed** a Telegraph Operator who was required by the Hours of Service Law to lay off on November 18 to **work** as a Train Dispatcher on November 19 was not entitled to **compensation** because he earned more during the **period** November 1 to 26 than he would have if he had **not worked as** a Train Dispatcher. This Board held:

"In the opinion of the Board, the Carrier misconstrues the rule. The example set **out** under the rule indicates that it was the intent to insure the **employee** against any loss of **compensation** for each **period** of time he is removed **from** his regular assignment in other service to protect extra dispatcher **work** until such extra dispatcher **work** has been **completed** and the **employee** is returned to his regular assignment in other service. Had any other basis **been** contemplated, **such as** **weekly** or monthly, it would have been an easy matter to have so **pro-**vided. It is well settled that this Board cannot amend rules through interpretation."

Thus this Board concluded the intent of Rule VIII was to insure employees **would** suffer no loss while removed **from** their regular assignment to protect extra dispatcher work. We specifically found the protection extends to "loss . . . for each **period** of time" removed **from** regular service.

In Claim Number 1 Mattox worked as a Train Dispatcher from December 3 to December 13 and did not perform his clerical assignment in the interim. During that period he earned more than he otherwise would have. As he suffered no loss during the period the Claim is denied.

Again in Claim Number 3 Mattox's Train Dispatcher assignment was one continuous period interrupted only by rest days or time off mandated by the Hours of Service Law. In this uninterrupted period he earned more than he would have in his regular assignment and is entitled to no further compensation.

In Claim Number 2 Deason lost time on December 11 and 12 in order to work as a Train Dispatcher on December 12. He then returned to his regular assignment and again lost time from that assignment on December 17 and 18 in order to work as a Train Dispatcher on December 17 and 19. In each of the two separate periods Deason suffered a loss even though he did earn more in the aggregate over the entire length of time under discussion. He is entitled to be compensated for the loss in those periods.

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. Lever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.