

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32263
Docket No. TD-32713
97-3-96-3-13

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Burlington Northern

STATEMENT OF CLAIM:

"The Burlington Northern Railroad Company (hereinafter referred to as the carrier) violated the current effective agreement between the Carrier and the American Train Dispatchers Department (hereinafter referred to as the organization), Article 2(e) in particular when on the dates stated in the various claims, the Claimants were required by the Carrier to work positions other than the ones obtained in the exercise of seniority.

The Carrier shall now compensate the Claimants the difference between the straight time rate and the overtime rate of pay for the dates herein listed in this dispute."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On various dates in July and August 1994, the several Claimants, all Assistant Chief Train Dispatchers working assignments in Carrier's centralized train dispatching office in Fort Worth, Texas, were not allowed to work their bid assignments. Instead, each was required to work different Assistant Chief Train Dispatcher assignments that had the same hours as their regular assignment, but with different duties and responsibilities. Carrier compensated each at their regular Assistant Chief Train Dispatcher rate of pay. The Organization contends that each was entitled to be paid at the overtime rate of pay, because they were denied the opportunity to work the assignments they had acquired by bulletin and bid.

There is no dispute as to any material facts in this matter. The dispute turns on what reading of the Agreement is correct. Thus, the sole issue before the Board is whether a regularly assigned Assistant Chief Train Dispatcher diverted to work on a different Assistant Chief Train Dispatcher assignment, during the same day with the same hours of his regular assignment, is entitled to be compensated at the overtime rate. The Organization says that such payment is required by the language of Article 2(e) of its Agreement. The Carrier says that Article 2(e) does not require overtime payments when an employee is moved off his bid assignment to work an Assistant Chief Train Dispatcher assignment.

The operative contract language involved in this matter is Article 2(e), reading:

“(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 an assigned train dispatcher who is used on the position of chief dispatcher, or assistant chief dispatcher, shall be compensated therefore 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.

Assistant chief dispatcher, required by the management to work a shift as trick dispatcher, will be compensated at the rate of his assigned position.

Assistant chief dispatcher, required by management to work as a chief dispatcher, will be compensated at the rate of chief dispatcher."

The title of Article 2(e) as well as its explicit terminology manifest an intent of the parties that Train Dispatchers, including Assistant Chief Train Dispatchers, will, on occasion, be required to perform "service on positions other than [the position of their] seniority choice." The first section of paragraph (e) provides that when this occurs, the "assigned train dispatcher" will be paid at the overtime rate of the position worked, and will not be entitled to any additional payment for not having worked his regular assignment. The term "assigned train dispatcher," as used in the first sentence of the first section of Article 2(e) must include both assigned Trick Train Dispatchers and assigned Assistant Chief Train Dispatchers, because elsewhere in the Article a distinction is made between the two.

Two exceptions apply to the overtime rate requirement when an assigned Trick Dispatcher or an assigned Assistant Chief Dispatcher works a position other than the one of their seniority choice. One is when the assigned Train Dispatcher is required to work the position of an Assistant Chief Dispatcher, the other is when the assigned Train Dispatcher is required to work the position of a Chief Dispatcher. In this case the assigned Assistant Chief Train Dispatchers were required to work other positions of Assistant Chief Train Dispatchers. Their use on a position other than that of their seniority choice without payment of overtime, clearly was within the exception provided in Article 2(e).

From study of the Organization's presentation it appears that it seeks to have the second, third, and fourth words of the first sentence of the first paragraph of Article 2(e), "assigned train dispatcher," as including both Trick Train Dispatchers and Assistant Chief Train Dispatchers when used there. However, when these same words are used in the same paragraph in the exception reading "except when an assigned train dispatcher is used on the position of ... assistant chief train dispatcher" it would only pertain to Trick Train Dispatchers, and not Assistant Chief Train Dispatchers. It is axiomatic that words and phrases used within an instrument cannot mean one thing in one place and something else in a different place. In *Ford Motor Co*, 48 LA 1213, (1967) at 1215, Arbitrator Platt observed that a word used by the parties in one sense should be interpreted in the same manner throughout the contract in the absence of countervailing reason. In this case there is no countervailing reason to include Assistant Chief Train Dispatchers within the term "assigned train dispatcher" when entitlement

is generated for payment at overtime rates, but not include them within that term when the exception to overtime payment is triggered.

Article 2(e) is not difficult to understand. It is not ambiguous in the least. It provides that a Trick Train Dispatcher who works a different Trick Train Dispatcher position is entitled to be paid at overtime rates, but, except as provided in Article 18, he is not entitled to additional payment for not working his regular assignment. Such overtime payments are not required, by the explicit terms of the Article, if a Train Dispatcher is moved to an Assistant Chief Train Dispatcher position, or to a Chief Train Dispatcher position. Moreover, if an Assistant Chief Train Dispatcher works a Trick Train Dispatcher assignment, he is not, by the language of the Article entitled to overtime, just that he will be compensated at the rate of his assigned position. And when an Assistant Chief Train Dispatcher is working as a Chief Dispatcher, the assignment will be paid for at the higher rate.

The claim of the Organization lacks agreement support. It will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 7th day of October 1997.