

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32298
Docket No. TD-32331
97-3-95-3-166**

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: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claims of Guaranteed Assigned Train Dispatchers Tardiff, Wiekell and Foreman for time and one-half on various dates for service on their sixth day in a workweek per Rule 11(a). (TD-409, 526 & 539)

Claim of regular assigned train dispatcher R. L. King for 12/21/93 at the overtime rate when a junior employee was used in violation of Rule 5, Section 2(e). (TD-540)"

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.

Claimants Tardiff, Wiekel, and Foreman, are Guaranteed Assigned Train Dispatchers, ("GATD") working under the March 7, 1985 GATD Agreement. During the week ending June 29, 1993, Tardiff's employment schedule was:

Wednesday	June 23rd.	Off Sick	paid 8-hrs Sick Leave.
Thursday	June 24th	Available	no pay.
Friday	June 25th	Posted G-1	paid 8-hrs straight time.
Saturday	June 26th	Worked	paid 8-hrs straight time.
Sunday	June 27th	Worked	paid 8-hrs straight time.
Monday	June 28th	Worked	paid 8-hrs straight time.
Tuesday	June 29th	Worked	paid 8-hrs straight time.

During the week ending December 21, 1993, Wiekel's employment schedule was:

Wednesday	Dec. 15th	Off Sick	paid 8-hrs Sick Leave.
Thursday	Dec. 16th	Worked	paid 8-hrs straight time.
Friday	Dec. 17th	Worked	paid 8-hrs straight time.
Saturday	Dec. 18th	Worked	paid 8-hrs straight time.
Sunday	Dec. 19th	Worked	paid 8-hrs straight time.
Monday	Dec. 20th	Worked	paid 8-hrs straight time.
Tuesday	Dec. 21st	Requested & Granted Hold-down on H-2.	

During the week ending December 21, 1993, Foreman's employment schedule was:

Wednesday	Dec. 15th	Worked	paid 8-hrs straight time.
Thursday	Dec. 16th	Worked	paid 8-hrs straight time.
Friday	Dec. 17th	Sick	excludable - no pay.
Saturday	Dec. 18th	Sick	paid 8-hrs Sick Leave.
Sunday	Dec. 19th	Sick	paid 8-hrs Sick Leave.
Monday	Dec. 20th	Rest Day	no pay.
Tuesday	Dec. 21st	Worked	paid 8-hrs straight time.

Separate claims were filed for the difference between straight time pay and time and one-half pay for each Claimant for service on the sixth day in their work weeks. The Organization contends that Tardiff was eligible for payment at the overtime rate for June 29, Wiekel for December 20, and Foreman for December 21, because they had

already received 40-hours pay in that work week, and service on the sixth day in a work week was required to be paid for at time and one-half rates. These claims were consolidated into a single Submission for presentation to this Board.

The second issue before the Board concerns Claimant King. Here it is asserted that he was denied an opportunity to work overtime on December 21, 1993, when Foreman, a junior employee, was used on a sixth day in his work week. King's claim was consolidated with the other three for presentation to this Board.

Carrier's defense is that time and one-half payments are not required to be paid either Tardiff, Wiekel, or Foreman, by the specific language of Rule 11, and because Foreman was properly worked at straight time on December 21, it was not necessary to use King at time and one-half rates.

The third paragraph of Rule 11(a), the operative agreement provision controlling resolution of this dispute, the specific rule authority mentioned in the Organization's statement of claim provides:

"RULE 11 - REST DAYS

(a) ...

...

Extra or guaranteed assigned train dispatchers who are required to work as train dispatcher in excess of five (5) straight time days in a work week will be paid at the overtime rate for work on either or both the sixth or seventh days but shall not have the right to claim work on such sixth or seventh days."

Neither Tardiff, Wiekel, or Foreman were required to work in excess of five straight time days in the work weeks involved in their claims. Accordingly, their claims for time and one-half are not supported by the explicit language of Rule 11. Furthermore, the Organization has not pointed to specific language of any other agreement provision that would support payment of time and one-half in the circumstances that exist here. Instead, it has merely argued that the sick leave

payments that Claimants received had ought to be treated the same as work for the application of Rule 11. To embrace this notion it would be necessary for the Board to substitute terms like "compensation" for "work" in the texture of the rule. The parties that drafted the Agreement chose not to do so, and this Board is without authority to do this for them. Accordingly, the claims of Tardiff, Wiekkel, and Foreman are found to be without merit. They will be denied.

The denial of Foreman's claim dictates that King's claim be denied as well. Foreman was properly used at straight time rates on December 21, 1993. Because he was properly used at straight time it was not necessary to offer the day to King at overtime rates. King's claim is without merit. 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 13th day of November 1997.