

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32300
Docket No. TD-32669
97-3-95-3-606

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: (

(CSX Transportation, Incorporated

STATEMENT OF CLAIM:

“(A) CSX Transportation, Inc. (‘Carrier’ or ‘CSXT’) violated Article 4 of its train dispatchers basic scheduled agreement applicable in the Jacksonville Centralized Train Dispatching Center (JCTDC) when it required regular guaranteed assigned train dispatcher (‘GATD’) G. A. Tibbits to perform service on rest days after such rest days were actively assigned.

(B) Because of said violation of the agreement, the Carrier shall now compensate train dispatcher G A Tibbits the difference between straight time compensation previously allowed him and time and one half for services performed on Tuesday and Wednesday October 18, and 19, 1994.”

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.

Appendix 6 to the parties' Agreement establishes special rules for Guaranteed Assigned Train Dispatcher (GATD) positions. Section 2 of Appendix 6 pertains to the workweek of GATDs. That Section provides:

"2. The workweek for each position will be Saturday through Friday and rest days need not be consecutive. However, if consistent, Carrier will attempt to relieve the incumbents for two (2) consecutive rest days."

Section 3 of Appendix 6 details the circumstances when time and one-half payments will be applicable during a GATD's workweek. That Section provides:

"3. Time and one-half rate of pay shall be applicable to incumbents of these positions for service preformed on either or both the sixth and/or seventh day of extra work in a workweek, except that such time and one-half rate of pay would not be applicable for service performed on either or both the sixth and/or seventh days when more than one week in (sic) involved.

Example: Workweek is Saturday through Friday. Employee does not work Saturday and Sunday and then works Monday, Tuesday, Wednesday, Thursday and Friday, then in the next workweek performs service Saturday through Wednesday. While service is performed on ten straight calendar days, the straight time rate of pay would be applicable for each day as only five days' service was performed in each workweek."

At the start of his workweek commencing October 15, 1994, Claimant was told that he was tentatively scheduled to observe his days on Tuesday and Wednesday, October 18 and 19. However, a regularly assigned Train Dispatcher marked off work on those dates, account sickness, and Claimant was used to cover the resulting vacancy. Claimant was given new rest days of Thursday and Friday, October 20 and 21.

Claimant worked on his second new rest day and was paid at the time and one-half rate for working that day.

The Organization filed a claim seeking the difference between straight time and time and one-half for Tuesday and Wednesday, October 18 and 19, on the basis that once Claimant had been assigned rest days for that workweek and was worked on those days, he was entitled to be compensated the same as a regular employee, as provided in Article 4(b) of the Agreement. This provision reads:

“(b) Service on Rest Days”

1. Regularly assigned train dispatchers who are required to perform service on rest days assigned to their position will be paid at rate of time and one-half the daily rate for service performed on either or both of such rest days.”

Carrier defended against the claim on the basis that the practice in the office of assigning tentative rest days at the beginning of a GATD employee's workweek is for convenience only. Manpower considerations can change these tentative schedules. Rest days are not assigned to any GATD employees. Thus, Article 4(b) does not cover their situation, but instead, the GATD Agreement controls, and Claimant was properly paid under the specific terms of that Agreement.

The Board notes that the GATD Agreement is a special rule, and as such it must prevail over the general rules of the Agreement, if conflict exists between a special provision and a general provision. In this case Claimant was not working as a regularly assigned Train Dispatcher, where the general rules of the Agreement would be applicable. He was working as a GATD Dispatcher, under the special rules the parties negotiated for this class of employee. It is the GATD Agreement that would cover in his situation. That he may have been told what his tentative rest days were at the start of his workweek did not make him a regularly assigned Dispatcher so as to place him under the umbrella of Rule 4(b). His workweek, rest days, and overtime entitlements for working more than five days a week were still covered by the provision of Appendix 6. When Claimant was required to work tentatively assigned rest days he was not a regularly assigned Train Dispatcher, but instead was a GATD employee covering a two day vacancy resulting from the absence of the regular employee because of sickness.

Using Claimant on this vacancy was within the very purpose and intent of the GATD Agreement.

It is clear that at all relevant times, Claimant was covered by Appendix 6. Because Appendix 6 pertains to this case, Sections 2 and 3 control rest days and work on rest days of GATD Dispatchers. These provisions state that time and one-half is applicable for service performed on an employee's sixth or seventh day of work in a workweek. They do not say that time and one-half is payable when required to work on tentatively assigned rest days if they are the fourth and fifth days of the workweek.

In the workweek under review here, Claimant was paid time and one-half for work on the seventh day of the workweek. Appendix 6 was properly applied, and Claimant is not entitled to additional compensation under Article 4 of the Agreement, as he was not covered under that Article at the time of the incident.

The claim is without merit. It must 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.