

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32368
Docket No. TD-32556
97-3-95-3-465**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim No. 1 - Carrier file TD-601

'Consolidated Rail Corporation (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"), Rule 10, Section 5 in particular, when the Carrier authorized T. W. Holland to perform work between his regular work periods and compensating Mr. Holland at the straight time rate instead of the overtime rate. The Carrier shall now compensate Mr. Holland the difference between the overtime rate the straight time rate for March 17-18, April 7-9-10-11-14-15-16-17-18-21-22, 1994.'

Claim No. 2 - Carrier file TD-623

'Consolidated Rail Corporation (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"), Rule 10, Section 5 in particular, when the Carrier authorized T. W. Holland to perform work between his regular work periods and compensating Mr. Holland at the straight time rate instead of the overtime rate. The Carrier shall now compensate Mr. Holland the difference between the overtime rate the straight time rate for May 13-14-15-16-19-21-22-23-26, 1994.'

Claim No. 3 - Carrier file TD-624

'Consolidated Rail Corporation (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"), Rule 10, Section 5 in particular, when the Carrier authorized T. W. Holland to perform work between his regular work periods and compensating Mr. Holland at the straight time rate instead of the overtime rate. The Carrier shall now compensate Mr. Holland the difference between the overtime rate the straight time rate for June 2-4-5-6-9-10-13, 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.

Prior to the claim dates Claimant held the position of Train Dispatcher, Desk G-2, at Harrisburg, Pennsylvania. During that time, Claimant's tour of duty was 3:00 P.M. to 11:00 P.M., with Tuesday and Wednesday as rest days. On March 14, 1994, Claimant accepted an offer from Carrier to work on a "special assignment", analyzing track and train operations and monitoring helper engine use on the Harrisburg and Pittsburgh Divisions.

For the time he was on this "special assignment", Claimant worked different days and shift; the "day tour", eight hours per day Monday-Friday, with Saturday and Sunday as assigned rest days. For his time working on the "special assignment",

Claimant was compensated at the same straight time rate he had earned while working as a Dispatcher.

The Organization submitted three claims, dated May 16, 1994, June 12, 1994 and July 21, 1994 for various dates in March, April, May and June 1994 when Claimant was working his "new" assignment. [It should be noted that on October 7, 1994, Claimant requested and was granted a one year leave of absence in order to continue working on the assignment in dispute.]

According to the Organization, Carrier's compensation of Claimant had violated Rule 10, Section 5(a) of the Agreement, which states:

"(a) A regular assigned employee notified or called to perform work, and reporting for such work, between his regular work periods and not continuous therewith, shall be paid on the actual minute basis at the overtime rate with a minimum of two (2) hours and forty (40) minutes, computed from the time he reports for work."

The Organization asserted that Carrier should have compensated Claimant at the overtime rate for all time spent on the "special assignment"; claiming the difference between the straight rate of pay, the rate at which Claimant was compensated, and the overtime rate of pay, to which Claimant was "entitled."

Each of the claims was declined by the Director of Train Operations-Harrisburg Division. In those declinations, Carrier maintained that the work performed by Claimant, while on "special assignment", was "not related to work covered by the ATDA Agreement and is not now nor was it a function which accrues to ATDA represented employees either by past practice or Agreement." Further, Carrier maintained that the claim had been filed on behalf of an "improper" Claimant. According to Carrier, when Mr. Holland accepted Carrier's offer of the "nonagreement assignment", he was no longer covered by, nor able to submit a claim under the Agreement.

The Organization progressed the claim to Carrier's highest designated officer, maintaining that in addition to violating Rule 10, Section 5(a) of the Agreement,

Carrier's actions violated "the exclusive representation rights of this Organization." Specifically, the Organization maintained that:

"Claimant Holland was a train dispatcher employee who was fully covered by all aspects of the Agreement between the Organization and the Carrier. As such, neither he, nor the Carrier, is empowered to alter, modify or abrogate any Agreement provision either to his benefit or to the detriment of other employees. That is precisely what has occurred in this dispute."

The Organization premised this claim on Rule 10, Section 5(a) of the Agreement. However, that reliance is misplaced. Prior to March 14, 1994, Claimant worked from 3:00 P.M. through 11:00 P.M., with rest days of Tuesday and Wednesday. After March 14, 1994, Claimant, while working the "special assignment", was assigned to the daytime shift, with rest days of Saturday and Sunday. The record is devoid of any evidence that Claimant remained the incumbent of the second trick Dispatcher position, let alone that he was called and reported to work the "special assignment" on the day shift in addition to working the second trick Dispatcher's job. The conditions precedent to invoking the premium pay provisions of Rule 10, Section 5(a) of the ATDA Agreement are not made out on the record before this Board. In this these circumstances, the claim must be denied for failure of proof.

For its part, in its Submission to this Board, Carrier relied upon Rule 3 of the Conrail/ATDA Agreement which expressly provides for the promotion or assignment of Dispatchers to supervisory or nonagreement positions. At the outset, that argument is clearly de novo, and cannot, therefore, be considered.

Finally, whatever process Carrier used with regard to filling, or not filling Claimant's former G-2 position, is not germane to this dispute. If, arguendo, Carrier had mishandled the advertisement and awarding of the G-2 position subsequent to the Claimant's acceptance of his new nonagreement position, that claim arguably accrued to an employee who may have been denied an exercise of seniority onto said position. This record, however, is barren of any information regarding Claimant's former G-2 position, and that cannot be considered an issue before this Board. Based on all of the foregoing, this claim is 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 30th day of December 1997.