

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32378
Docket No. TD-31997
97-3-94-3-353

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:

"System Dockets TD-282 & TD-283

Claims filed for D. R. Meiss for difference between the straight time rate and the overtime rate of pay for service performed on his assigned rest days on 3/27, 4/3, 4/10 & 4/17, 5/1, 5/8 & 5/15/93.

System Dockets TD-251, TD-252 & TD-284

Claims filed for E. S. McKeown for eight hours pay at the overtime Assistant Chief Dispatcher's rate account not called to perform extra work ('Special Duty') on 3/27 & 4/17 & 5/1/93.

System Docket TD-253

Claim filed for J. J. Winston for eight hours pay at the overtime Assistant Chief Dispatcher's rate account not called to perform extra work ('Special Duty') on 4/10/93.

System Dockets TD-277 & TD-284

Claims filed for D. R. Moyer for eight hours pay at the overtime Assistant Chief Dispatcher's rate account not called to perform extra work ('Special Duty') on 5/8 & 5/15/93."

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 the several dates involved in the several claims under review in this docket Carrier utilized Train Dispatcher D. R. Meiss on his rest days for special duty for the Supervisor-Operating Rules conducting operating rules classes. Previously between April 1983 and January 1985, Meiss had been on leave of absence from his Train Dispatching position to work in the office of Supervisor-Operating Rules, conducting training classes full time. For this special duty on his rest days Claimant was paid at the straight time rate pay of a Train Dispatcher.

The Organization filed the instant claims on behalf of Meiss and three Assistant Chief Train Dispatchers contending that, first, it was a violation of its Agreement when Meiss made a private agreement with Management to do the special work at straight time rates on his rest days, and second, the Assistant Chief Train Dispatchers should have been called for the work because they were senior to Meiss.

Carrier argues that the work it utilized Meiss on on his rest days is not work subject to the rules of the Conrail/ATDA Agreement. Because Meiss was not performing Train Dispatching work, he was not entitled to be paid overtime as a Train Dispatcher, and the three other Claimants involved have no claim to the work, as conducting rules classes is not work subject to the Train Dispatcher's Agreement.

All of the claims are without merit, and will be denied. To prevail the Organization must demonstrate that the work performed by Meiss was work subject to its Agreement. This has not been done in this record, indeed, it has not even been

attempted. Instead, the singular thrust of the Organization's argument is that because Meiss was a Dispatcher at the time and was paid by Carrier for instructing rules classes on his rest days the Agreement was violated. The Organization's Agreement with Carrier covers Train Dispatching activity. It does not cover instructing rules classes. Simply because Carrier utilized a Dispatcher for this activity, whether he was on leave of absence to do it full time, or whether he laid off as a Dispatcher on regularly assigned days or whether he worked on his rest days, does not place the work within the Scope of the Dispatcher's Agreement.

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.