

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33995
Docket No. TD-34728
00-3-98-3-389**

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

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

PARTIES TO DISPUTE: (
(Soo Line Railroad)

STATEMENT OF CLAIM:

“On Sunday, October 30, 1994, all clocks were turned back one (1) hour at 0200 hours, to conform with Standard Time. The above named dispatchers were all on duty during the shift 0000-0800 hours on this date, performing a total of nine (9) hours of service.

The Organization now claims one (1) hour pay at the penalty rate for each of the above named dispatchers-and also the dispatchers that would have been working in the Chicago and Spring Hill Dispatching offices during this time.”

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.

As is evident by the Statement of Claim, this dispute seeks one hour overtime for the ninth hour for each Dispatcher who worked the 0000-0800 shift on October 30, 1994. The Organization cites Rule 4 which reads:

“Time worked in excess of eight (8) hours on any day, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis.”

The Carrier's defense has been that, 1) Historically, Train Dispatchers have never been compensated in the fall of the year, just as no Dispatchers have been paid for less than eight hours when in the spring they only work seven hours; and 2) The ninth hour worked in the fall and the seven hours worked in the spring are as a result of the 1966 Uniform Time Act.

The Organization's response to the fact they had never prior to this claim filed time for the ninth hour worked is a practice contrary to Rule 4, and regardless of the historic practice, when it conflicts with the Rule, the Rule controls.

What is overlooked is the 1966 Uniform Time Act. It is that Act that created a 23-hour day on the first Sunday in April and a 25-hour day on the last Sunday in October. In fact, the change from Standard Time to Daylight Savings Time back to Standard Time started as far back as World War II to conserve energy.

There is no evidence that prior to October 30, 1994, that any Dispatcher on the property had ever claimed the overtime hour on the one day in the fall when the time is changed, nor is there any evidence that the Carrier has paid anything other than eight hours when the change is made from Standard to Daylight by eliminating the hour 0200 to 0300. In fact, not one of the 24 Awards furnished this Board by the Organization sustains payment for working the ninth hour when changing from Daylight Savings to Standard, even though since World War II there must have been thousands of third trick employees who did work. The absence of such Awards speaks volumes to this Board.

This practice of the Carrier involving the time changes does not really nullify the express terms of Rule 4. It merely gives meaning and intent to the application of daily overtime when the clocks are changed by Public Law.

See Second Division Award 13277; Award 37 of Public Law Board No. 369; and Fourth Division Award 3459.

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 19th day of April, 2000.