Award No. 2622
Docket No. TD-2567

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN RAILWAY SYSTEM

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that the Southern Railway System violated Article 2 (a) of the Train Dispatchers' Agreement effective September 1, 1929, and Rules 3-(a) and 3-(b) of the Mediation Agreement dated March 14, 1942 (made a part of the Agreement) when it failed and refused to pay Dispatcher A. B. Plemons, Knoxville, Tenn., office, for eight (8) hours at rate and one-half for service performed on his regularly assigned relief day May 11-12, 1943.

EMPLOYES' STATEMENT OF FACTS: Mr. A. B. Plemons is a regularly assigned dispatcher working third trick in the Knoxville, Tenn., office with hours 11:00 P. M. to 7:00 A. M. with one day of rest per week.

His rest day, on the occasion in question, was due to extend from 7:00 A. M., May 11, 1943 until 11:00 P. M. May 12, 1943. At 10:00 A. M., May 12th, he was instructed to report for work at 7:00 P. M. that evening. He reported as instructed and worked on his rest day from 7:00 P. M. to 11:00 P. M. He then worked his regular trick from 11:00 P. M. the 12th to 7:00 A. M. the 13th.

The Carrier paid him four hours at rate and one-half for the service performed on his relief day and eight hours straight time for his regular tour of duty.

This claim is for eight (8) hours' pay at rate and one-half for the service performed on his rest day under the provisions of Articles 2 (a) and 6 of the Agreement dated September 1, 1929, and Rules 3-(a) and 3-(b) of the Mediation Agreement (Case A-1122-B) dated March 14, 1942, (made a part of the agreement).

POSITION OF EMPLOYES: Day's work, Rule 2 (a) of the current Dispatchers' Agreement provides:

> "Eight (8) consecutive hours shall constitute a day's work for train dispatchers."

Rates and application of pay, Article 6, provides:

> "(a) Train Dispatchers' positions shall be monthly rated. The monthly compensation of positions on the various divisions for any calendar month's service, including relief days, shall be shown below:

* * * * * * * * * *

(3) With respect to the declaration required by Circular No. 1 of the Board that all relevant, argumentative facts, including documentary evidence, have been presented to the employes or their representatives, your respondent attaches, as Carrier's Exhibit 3, letter addressed to Mr. Stange by Assistant to Vice President G. H. Dugan in response to Mr. Stange's letter of August 4, and Mr. Stange's reply of August 19, 1943, as Carrier's Exhibit 4, which constitutes the entire handling of this case on appeal. This correspondence contains all that the respondent knows of the employes' position with respect to this claim, as well as all of what the respondent has said to the employes' representatives with respect to it.

OPINION OF BOARD: Preliminary to our consideration of other matters, we note a contention this claim should be dismissed for failure to comply with procedural requirements of The Railway Labor Act and Circular No. 1 of the Board, established pursuant thereto. Specifically, it is based on the ground that the claim presented here is not the claim presented to, or discussed with, the carrier.

A careful examination of the record convinces us the contention is without merit. The evidence clearly discloses that when first presented contentions and circumstances on which the claim was predicated were clearly stated. While it may be conceded there was some ambiguity in its language as to the extent of the relief sought the carrier knew, or should have known, what was claimed from the related circumstances and contentions. Moreover, we believe the fair import of other evidence is to the effect the carrier was not deceived by its terms but denied the claim with full and complete understanding as to its nature and extent. With a factual situation as is disclosed here we know of no award sustaining a dismissal of the claim, nor do we find any language in either the Act or our Circular which contemplates that action. Appeals are favored by the law and procedural appeal statutes, likewise similar rules and regulations adopted by Boards and Commissions authorized to promulgate them, are liberally construed to the end that controversies may be determined not on technicalities, but on their merits.

Having determined the claim is properly here for review the factual situation on which it is based becomes relatively unimportant since the parties concede the sole remaining question is whether or not under the rules of the Dispatchers' Agreement and the Mediation Agreement, dated March 14, 1942, regularly assigned dispatchers called upon in an emergency are entitled to a minimum of eight hours' pay at rate and one-half for service performed on their assigned rest days.

So far as the facts on which the instant claim is based are pertinent they are not in conflict and can be found in the statement of facts but for purpose of clarity it should be briefly related that due to an existing emergency the claimant was called and worked at least four hours of his duly assigned rest day on May 12, 1943, for which he was paid at the rate of time and one-half. Refusal to compensate him for a minimum day's work on the basis heretofore referred to resulted in this dispute and subsequent proceedings.

At the outset it must be conceded we do not have for guidance in our deliberation precedents which can be said to be identical either as to the factual situation under which the claim came into existence or rules and regulations applicable to its proper disposition. Both petitioner and respondent have been zealous in their citation of awards on which they rely in support of their respective positions. These awards have been carefully examined but we shall not attempt to review or discuss them. It will suffice to say that most of them rest on rules not here involved and none of them are "horse" cases or on "all fours" with the problem which confronts us. For the reasons stated they are not criterions on which we can or should rely, and we proceed on that premise.

In support of his claim the petitioner cites Article 2 (a) of the Train Dispatchers' Agreement, which reads:

> "Eight (8) consecutive hours shall constitute a day's work for train dispatchers."

Also cited are rules agreed upon through mediation, which provide (Rule 3-a):

> "Effective April 1, 1942, each regularly assigned train dispatcher (and extra train dispatchers who perform six consecutive days' dispatching service) will be entitled and required to take one regularly assigned day off per week as a rest day, except when unavoidable emergency prevents furnishing relief. A regularly assigned train dispatcher required to perform service on the rest day assigned to his position will be paid at rate of time and one-half. An extra train dispatcher required to work seven consecutive days as a train dispatcher, will be paid time and one-half for service performed on the seventh day."

Likewise referred to are Article 6 (b) of the Dispatchers' contract and Rule 3-(b) of the Mediation Agreement. We shall not hereafter refer to either as we deem them of little consequence here. The first has been modified by Rule 1 of the Mediation Agreement to the extent that compensation for train dispatchers is now computed on a daily basis while as to the latter it is conceded the petitioner's service was performed on his "rest day" and there is no misunderstanding or contention with respect to the meaning of that term as used herein.

On behalf of the carrier as bearing upon the dispute we are referred to Rule 2-(a) of the Mediation Agreement, which states:

> "Effective April 1, 1942, 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."

Also Rule 4, which reads:

> "The above rules shall be incorporated in existing agreement of the carriers named above; any rules in conflict therewith to be cancelled or amended accordingly."

Time nor space will permit detailed relation of the arguments of the respective parties. Petitioner contends Article 2 (a) guarantees a minimum of eight (8) hours for a day's work. For purposes of this proceeding, so far as it relates to a regular assignment we will concede the point. But the service to which petitioner was assigned was not a part of his regular assignment. It was an emergency assignment on his rest day authorized by the provisions of Rule 3-(a) of the Mediation Agreement, which expressly provided the rate of compensation to be paid.

The carrier in turn points to 2-(a) of the agreement last referred to and argues its terms authorize payment as there stated. That cannot be for that section deals with overtime, not service on a rest day.

Summarizing, the gist of petitioner's whole contention is that because no express provision for compensation under the circumstances of the instant situation is to be found in either of the agreements, the provisions of 2-(a) of the Train Dispatchers' Agreement by implication reach over and include the rest day period, while that of the carrier is that Rule 2-(a) of the Mediation Agreement should be construed to authorize payment of compensation of rest day service on the minute basis, the same as overtime.

We cannot give our approval to either of these contentions advanced by petitioner or carrier. An elementary rule applicable to the construction of all contracts and agreements is that the rights of the parties thereto are to be determined by the language to be found in the instruments themselves. Otherwise stated, contractual rights are to be determined from the four corners of the agreement executed by the parties. Unless language expressly or impliedly authorizing payment of eight (8) hours' pay at rate and one-half for service on petitioner's rest day can be found in the agreements themselves it is not within the province of the powers of this Board to read into them any such meaning or import. To adopt the practice of broadening or extending the terms of any instrument by a tribunal such as ours will only lead to confusion and uncertainty and ultimately to injustice and hardship to both employe and carrier. Far better for all concerned is a course or procedure which adheres to the elemental rule, leaving it up to the parties by negotiation or other proper procedure to make certain that which has been uncertain.

From a careful examination of both the Dispatchers' and the Mediation Agreements, we are unable to find anything except 3-(a) of the latter which pertains to compensation to be paid for service performed on a rest day, nor are we there, when measured by the rule covering the construction of contracts, able to find anything which permits a construction authorizing the payment of compensation on a minimum eight (8) hour basis irrespective of the length of time required for the service rendered on such day.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier did not violate the agreement and since petitioner has been paid at rate and one-half for service performed on his rest day he is entitled to no relief in this proceeding.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of July, 1944.