

Award No. 2713

Docket No. TD-2690

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI PACIFIC LINES (GULF COAST LINES)

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association:

(1) That the Missouri Pacific Lines (Gulf Coast Lines) violated Paragraph 2-(a) of the Mediation Agreement effective April 1, 1942, when it failed and refused to pay Dispatchers W. T. Mathis and J. T. Bay, Kingsville, Texas office, at time and one-half rate for time worked in excess of eight (8) hours on October 23, and November 5, 1943, respectively, and

(2) Under the provisions of Paragraph 2-(a), Dispatcher Mathis is entitled to additional compensation and should now be paid twenty (20) minutes at time and one-half on October 23, 1943, and Dispatcher Bay twenty (20) minutes at time and one-half on November 5, 1943.

EMPLOYEES' STATEMENT OF FACTS: Dispatchers W. T. Mathis and J. T. Bay are regularly assigned trick dispatchers in the Kingsville, Texas office of the carrier. On October 23, 1943, Dispatcher W. T. Mathis worked first trick, with assigned hours of 8:00 A. M. to 4:00 P. M. Due to a large number of train orders which he was required to issue, including a number of clearance orders, and in order not to delay a number of trains, he was unable to start transfer to the second trick dispatcher until 4:21 P. M. The train order book for this date will show that Mr. Mathis signed the transfer at 4:21 P. M., and that it was signed as complete by Mr. J. L. Jones, second trick dispatcher, at 4:42 P. M.

Similarly, on November 5, 1943, Dispatcher J. T. Bay worked first trick in this office and due to the number of train orders and clearances, and in order to avoid delay to trains, he was unable to start transfer until 4:20 P. M. The train order book for this date will show that Dispatcher Bay signed the transfer to second trick dispatcher at 4:20 P. M., and that it was signed as complete by W. T. Mathis at 4:38 P. M.

This claim covers the actual time Dispatchers Mathis and Bay were required to work in excess of eight hours on the dates in question, and does not include the time required to make transfers.

This dispute has been handled up to and including the highest officer designated by the carrier for that purpose, whose letter denying the claim is attached hereto as employees' Exhibit TD-1.

POSITION OF EMPLOYEES: Paragraphs 2-(a) and (b) of the Mediation Agreement, effective April 1, 1942 (now a part of the Dispatchers' Agreement in effect on that property, dated November 1, 1925) are involved and have been violated.

and to Section 4 of Mediation Agreement A-1572-A and A-1572-B effective March 4, 1944, subsequent to Mediation Agreement effective April 1, 1942, reading as follows:

"Section 4—The said increases provided for in Sections 1 and 2 also include compensation paid as the equivalent of or in lieu of claims for meal period and overtime for transfer time as requested in the notice served by the American Train Dispatchers Association on the carriers parties hereto on or about June 15, 1943."

It is the position of the Carrier that Train Dispatcher Mathis on October 23, 1943, and Train Dispatcher Bay on November 5, 1943 were not required to perform any service after 4:00 P. M. other than that required to make transfer, and under the provisions of Paragraph 2 (b) of Mediation Agreement effective April 1, 1942, which was in effect at the time of this claim, they are not entitled to the 20 minutes overtime claimed. As the Carrier has previously shown, with three continuous shifts of train dispatchers employed and under existing instructions, the "relieving dispatcher must report for duty before the hour set for him to assume charge * * *," there would be no necessity for the dispatcher going off duty to perform any service other than that required to make transfer, and certainly there was no necessity for them doing so in the case under consideration. As a matter of fact, the purpose of the instructions providing that the "relieving dispatcher must report for duty before the hour set for him to assume charge" is to obviate just such a situation as is here involved and permit the outgoing train dispatcher to be relieved immediately upon completion of his transfer to the relieving train dispatcher.

When consideration is given to all the facts in this case it is clearly evident that there was no necessity for, and that Train Dispatchers Mathis and Bay were not required to, work in excess of eight hours, exclusive of the time required to make transfer on the dates in question and, consequently, are not entitled to the overtime claimed under the provisions of Paragraph 2 (a) of Mediation Agreement effective April 1, 1942. Therefore, the contention of the Employees should be dismissed and the claim accordingly denied.

OPINION OF BOARD: On October 23, 1943, the terminating time of the assignment of claimant W. T. Mathis was 4:00 P. M., at which time he was to be relieved by Train Dispatcher Jones. Because of the exigencies of the work at that particular time, Mathis could not begin to check the transfer of train orders until 4:21 P. M., and this work was completed at 4:42 P. M. That is to say, between 4:00 and 4:21 P. M. of that day, Mathis put out five train orders.

In the claim of J. T. Bay, his assignment terminated at 4:00 P. M. on November 5, 1943, but, also, because of train orders, he was unable to start checking the transfer of train orders until 4:20 P. M. of that day, and the checking was completed at 4:38 P. M.

Petitioners contend that Mathis and Bay are entitled to overtime pay for the time consumed in putting out train orders from 4:00 P. M. and the time they started to check the transfer with the relieving train dispatchers. Petitioners' bases for the claims are Paragraph 2-a which provides for time and one-half for work in excess of eight hours, except time required to make transfer, and Paragraph 2-b which defines "Transfer Time." It reads as follows:

"2-b. The term 'time required to make transfer,' as used in Item 2-a above, includes the time it is necessary for the train dispatcher who is being relieved, to turn over to the relieving train dispatcher the information necessary to permit the relieving train dispatcher to fully and completely begin dispatcher service on the trick to which he is assigned. A train dispatcher who is required to remain in charge during the time transfer is being made will not be considered as having accrued overtime. Except to extent provided herein with respect to

transfer time, a train dispatcher required to remain on duty after the expiration of his tour of duty will be paid for such time as overtime." (Mediation agreement, effective April 1, 1942.)

Under the facts in this record, we are of the opinion that the rules relied upon do not support Petitioner's contention. This contention ignores the following sentence in the definition of "Transfer Time": "A train dispatcher who is required to remain in charge during the time transfer is being made will not be considered as having accrued overtime." There is no contention that the relief dispatcher did not report at the proper time in the two instances in question; therefore, the claim should be denied.

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 Employees involved in this dispute are respectively carrier and employees 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 there was no violation of the Agreement.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.