

Award No. 2744

Docket No. TD-2796

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that the Southern Railway Company violated Article II (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 J. E. Kirtley, Birmingham, Alabama, office, A. G. S. Division, for one minimum day, eight (8) hours, at rate of time and one-half for service performed starting 7:00 P. M. Thursday, February 17, 1944, which was four (4) hours before the expiration of his regular weekly forty-eight (48) hour rest day period.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. E. Kirtley at the time this claim arose was a regularly assigned dispatcher working third trick, Birmingham office, (A. G. S. Division), with hours 11:00 P. M. to 7:00 A. M. with one rest day per week.

His rest day, on the occasion in question, was due to extend from 11:00 P. M. Tuesday, February 15, until 11:00 P. M. Thursday, February 17 (Article 3-(b)). At One P. M. on Thursday, February 17, he was instructed to report for work at 7:00 P. M. that evening. He reported as instructed and performed service 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 17th, to 7:00 A. M. the 18th.

The carrier paid him four (4) hours at rate and one-half for this service. This claim is for a minimum day, eight (8) hours, at rate and one-half for the service performed on his rest day under the provisions of Articles II (a) and VI 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). As Mr. Kirkley has been paid four hours at rate and one-half, he is now entitled to four (4) hours additional pay at rate and one-half.

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

POSITION OF EMPLOYEES: Article II (a) of the current Dispatchers' Agreement (1929) provides:

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

Rules 3-(a) and 3-(b) of the Mediation Agreement dated March 14, 1942, provide:

(2) Your respondent shows that the rules cited do not support the claim. Rule 3 (a) of the Mediation Agreement provides for payment at rate of time and one-half for service performed on a rest day. It does not require a minimum payment of eight (8) hours at time and one-half rate for any service performed on the rest day. Obviously, as stated in Award 2622, Rule 3 (b) has no bearing on the situation, presented by this claim, and claim, therefore, should be denied.

(3) Your respondent shows that under the provisions of Rule 3 (a) of the Mediation Agreement of March 14, 1942, as well as Rules 2 (a) and 2 (b) of that agreement, Mr. Kirtley was properly paid for service performed, beginning four (4) hours in advance of his regular tour of duty on February 17, 1944, and, therefore, the claim should be denied.

OPINION OF BOARD: The identical question was before this Board in Docket No. TD-2567, Award No. 2622, wherein this Board denied the claim. But the petitioner contends that Award is not sound and should be overruled. We have re-examined the issue involved in that claim and have concluded that there is no justification for overruling that Award. We think the right result was reached in Award No. 2622, and should be followed in this claim. It follows that this 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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of December, 1944.