

Award No. 6989
Docket No. TD-6679

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Western Lines)**

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

(a) The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as "the Carrier", acted contrary to the provisions of Article III, Sections 1 and 2, of the currently effective Agreement between the parties to this dispute when, it compensated E. J. Barnes at the pro rata or straight-time rate instead of the time and one-half rate for overtime service performed on February 7, 1952, in its Dodge City, Kansas office.

(b) The Carrier shall now pay to E. J. Barnes the difference between the straight-time rate of the Chief Train Dispatcher and the time and one-half rate required by the Agreement rules for service performed by him in excess of eight (8) hours on February 7, 1952, by reason of being required to work as Chief Dispatcher immediately following his tour of duty as Assistant Chief Dispatcher.

EMPLOYES' STATEMENT OF FACTS: An agreement on rules governing compensation, hours of service and working conditions, dated September 1, 1949, between the parties to this dispute, and applicable to the claimant in this case, was in effect at the time this dispute arose. A copy of that agreement is on file with this Board and is, by this reference, made a part of this submission as though fully incorporated herein.

In the above referred to agreement, Article III—HOURS OF SERVICE, OVERTIME AND CALLS, Sections 1 and 2 thereof read as follows:

Basic Day

"Section 1. Eight (8) consecutive hours shall constitute a day's work."

Overtime

"Section 2. Time worked under this Agreement in excess of eight (8) hours, continuous with, before or after, regular assigned

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Assistant Chief Dispatcher

11:45 P. M., February 21 to
7:45 A. M., February 22, 1953.

Chief Dispatcher

7:45 A. M., February 22 to
4:45 P. M., February 22, 1953.

Assistant Chief Dispatcher

11:45 P. M., March 26 to
7:45 A. M., March 27, 1953.

Chief Dispatcher

7:45 A. M., March 27 to
4:45 P. M., March 27, 1953.

In each of the above instances, Dispatcher Hamic was paid one day at the pro rata Assistant Chief Dispatcher's daily rate for service as such and, in addition thereto, was allowed one day at the pro rata daily rate of the Chief Dispatcher position on which used.

The factual situation in each of the above referred to instances was identical to that involved in the instant dispute. In each instance, the same as in the instant dispute, the Assistant Chief Dispatcher protected the Chief Dispatcher position continuous with and after completing his regular eight (8) hour assignment as Assistant Chief Dispatcher and performed sixteen (16) consecutive hours service by reason thereof. In none of the instances referred to above was any complaint or claim received from either the Employees or their representatives that the Assistant Chief Dispatchers, referred to, should have been paid time and one-half for the service performed on the position of Chief Dispatcher; all of which should prove conclusively that the complainant Organization's representatives are, through the medium of the claim in the instant dispute, attempting to advance an interpretation of the Agreement rules which the Employees and their representatives have previously recognized could not be supported under the Agreement rules in circumstances identical to those existing in the instant dispute. While the language of the Agreement rules in effect between the parties hereto is clear and unambiguous and expressly requires a denial of the Employees' claim, the Third Division has, in instances where there was a question as to the meaning and intent of the Agreement rules, consistently recognized and held that the conduct of the parties to an Agreement is often as expressive of intention as the written language of the rules. See Third Division Awards 2436, 3603, 4104, 4464, 5079, 6076 and many others.

* * * * *

In conclusion, the Carrier respectfully reasserts that the instant claim is entirely without support under the Agreement rules in effect between the parties hereto and should, for the reasons set forth herein, be denied in its entirety.

The Carrier is uninformed as to the arguments which the Organization will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude is necessary in reply to the Organization's ex parte submission and any subsequent oral argument or briefs presented by the complainant Organization in the instant dispute.

All that is contained herein has been both known and available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The rules of the current Agreement relied upon by both parties to this dispute are discussed at some length in the record and awards of this Division are cited in support of the position taken. We deem no useful purpose would be served in a recitation of the arguments

advanced in support of the interpretation of rules cited, as applied to the facts herein, as this has been done in a complete and thorough manner in the record.

Based upon the facts and circumstances existing herein, and without in any way establishing a precedent, we find no basis for a sustaining award.

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

The Agreement was not violated.

AWARD

Claims disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.