

Award No. 10235

Docket No. TD-10373

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Pennsylvania Railroad Company, hereinafter referred to as "the Carrier" acted contrary to the intent of Part II of its Agreement with the American Train Dispatchers Association, effective August 1, 1943 except as otherwise designated, when it refused and continues to refuse to compensate Extra Assistant Movement Director J. P. Nolan at time and one-half rate, as provided for in Regulation 4-A-2, for time worked in excess of eight hours on June 8, 1956.

(b) The Carrier shall now pay Extra Assistant Movement Director Nolan the sum representing the difference between pro-rata rate, which he was paid, and the time and one-half rate, which he would have been paid if he had been compensated in accordance with the provisions of Regulation 4-A-2.

EMPLOYES' STATEMENT OF FACTS: There is in effect an Agreement between the Pennsylvania Railroad Company and Train Dispatchers, Movement Directors, Power Directors, Assistant Power Directors and Load Dispatchers, employees of the Pennsylvania Railroad Company represented by the American Train Dispatchers Association. Part II of said Agreement contains provisions governing Movement Directors and became effective August 1, 1943 except as otherwise designated. A copy of this Agreement is on file with your Honorable Board and is, by this reference, made a part of this submission as though fully incorporated herein.

For ready reference and convenience of the Board the Regulations most pertinent to this dispute are found in Part II of the Agreement and quoted as follows:

"SCOPE

"(Effective July 1, 1950) The Provisions set forth in Part II of this Agreement shall constitute an Agreement between The Pennsyl-

agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the Claimant performed service on two eight-hour tours of duty on a day within the provisions of one of the exceptions to the overtime rule set forth in the applicable Agreement; that he was properly compensated in accordance with this exception; that the Carrier has not violated any provisions of the applicable Agreement; and that, therefore, the Claimant is not entitled to the compensation which he claims.

It is, therefore, respectfully submitted that the claim here before your Honorable Board is not supported by the facts or by the Movement Directors' portion—Part II—of the Agreement with employees represented by the American Train Dispatchers Association and should be denied.

All data contained herein have been presented to the employees involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole question for determination in this case is the meaning of Regulation 4-A-2(a) of Part II of the Agreement between the Carrier and the Employees represented by the Train Dispatchers Association, effective July 1, 1950.

Claimant, as Assistant Movement Director in the New York region worked as Extra Assistant Movement Director on the second trick on June 8, 1956 from 3 P. M. to 11 P. M., and in the same capacity on the third trick from 11 P. M. June 8 to 7 A. M. July 9, 1956. For this entire service of sixteen consecutive hours he was paid at the pro-rata rate, and the Employee maintains that he should have been paid at time and one-half rate for the third trick under Regulation 4-A-2(a). Claim was presented for the difference, and denied by the Carrier on the ground that the Regulation involved does not support the interpretation claimed by the Dispatchers.

Regulation 4-A-2(a) governing Movement Directors (which includes Assistant Movement Directors) was adopted verbatim, except for changes in job titles, from a 1943 Agreement between the same parties, and is in words and figures as follows:

"4-A-2. (a) Movement Directors shall be paid on an actual minute basis at the rate of time and one-half for all time worked, continuous with and before or after their regular work period in excess of eight (8) hours, exclusive of the time required to make transfer in any day; except that, a relief Movement Director working on two (2) positions covered by his regular assignment, and an extra Movement Director working as such on two (2) positions, on any day, shall be paid at the straight time rate for the first eight (8) hours of service on each position."

The Carrier cites two similar instances on the Pittsburgh and Conemaugh Divisions on August 8, 1954 in each of which it informed the General Chairman of the Dispatchers of its position that Regulation 4-A-2(a) does not support the claim of an extra Movement Director for time and one half for

a second tour of duty within twenty-four hours. The Carrier contends that as the Organization did not further progress these claims, it impliedly acknowledged the validity of the Carrier's interpretation of the Regulation. The Organization asserts that the 1954 cases were not further progressed because the Carrier subsequently resumed paying the penalty rate for the second tour of duty under like circumstances.

The Carrier objects to exhibits attached to the Employees reply to the Carrier's submission on the ground that such material was not made available during discussions on the property. The seven exhibits referred to are unnecessary to and will not be considered in interpretation of the pertinent Regulation in view of the objection made. Neither do we construe the Employees abandonment of the 1954 claims under Regulation 4-A-2(a) as an Agreement with the Carrier's interpretation of said Regulation.

We find the Employees' interpretation to be the correct one. We think the plain purpose of the exception to the penalty payment for time worked in excess of eight hours was to give recognition to the normal and reasonable requirements of a relief Movement Director's Assignment when called on to cover two positions within a span of twenty four hours, viz., in the case of his regular assignments, and when the relief Movement Director's assignment is filled by an extra Movement Director. We read the exception to 4-A-2(a) as a complete sentence embodying two aspects, and are of the Opinion that the principal subject thereof is a relief Movement Director. It was such position that the contracting parties were excepting from the general requirement of time and one-half for work in excess of eight hours in a twenty four hour day. If such were not the case, there would be no logical reason for the use of the words "as such". If the exception were to be extended to an extra Movement Director working in that capacity on two positions on any day other than in the regular assignment of a relief Movement Director, it would have been a simple matter to accomplish that result by not incorporating the words as such.

Additional support for this meaning of the language of the Regulation, if needed, may be found in the unchallenged history of a non-controversial application of this interpretation for eleven years preceding 1954.

A universal rule of construction is that where the language used is susceptible of two meanings, one of which would lead to a logical or sensible result, and the other to an illogical or unreasonable result, the former interpretation is to be preferred as the result intended by the contracting parties. See Award 6664.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1961.