Award No. 10346
Docket No. TD-11029

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

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 Movement Director J. D. Tagliaferi at time and one-half rate, as provided for in Regulation 4-A-2, for time worked in excess of eight hours on May 27, 1958.

(b) The Carrier shall now pay Extra Movement Director Tagliaferi 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, employes 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 Pennsylvania Railroad Company and its Movement Directors, represented by the American Train Dispatchers Association, and shall govern the

rector whose regular assignment comprehends two tours of duty in one day."

Copies of these letters are attached as Exhibits "C" and "D". As stated above, there was no further progression of these cases. It should also be noted that at the time of these denials the Movement Directors at Buffalo were under the jurisdiction of the General Manager, Central Region.

III. Under the Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfullf submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Sub-Section (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not 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 employes represented by the American Train Dispatchers Association and should be denied.

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

(Exhibits not reproduceed).

OPINION OF BOARD: The question involved here is the interpretation and meaning of Regulation 4-A-2 of Part II of the Agreement between the Carrier and Employes represented by the Train Dispatchers, effective July 1, 1950.

The facts in this case show that on May 27, 1958, Claimant was an extra Asssitant Movement Director at Buffalo, New York, on the Carrier's Northern Region. That on May 27, 1958, the incumbents of regular Assistant Movement Director positions, tours of duty 6:00 A. M. to 2:00 P. M. and 2:00 P. M. to

10:00 P. M. were not able to cover their respective assignments and Claimant being the senior available extra Assistant Movement Director was called to fill both vacancies and did fill such vacancies, thus working sixteen consecutive hours. For such services he was compensated at the applicable straight time rate for each position worked.

Claimant presented a claim for time and one-half for doubling under Rules 4-A-1 and 4-B-1, Regulation No. 4.

Carrier denied the claim and maintains that the circumstances of the instant case brings it within the second exemption contained in Rule 4-A-2(a) Regulation No. 4.

The pertinent rules which pertain to this case and which govern Movement Directors (which includes Assistant Movement Directors) are as follows:

> "4-A-1. Eight (8) consecutive hours of service, exclusive of the time required to make transfer, shall constitute a day's work for Movement Directors.
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> "4-A-2. (a) Movement Directors shall be paid on an actual movement 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.
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> (b) The phrase 'time required to make transfer' as used in Regulations 4-A-1 and 4-A-2, includes the time spent by a Movement Director, when being relieved, in transmitting to the relieving Movement Director, the information necessary to enable to the latter to discharge his duties fully and completely on the trick to which he is assigned. A Movement Director who is required to remain in charge during the time transfer is being made shall not be considered to have accrued overtime.
>
> "4-B-1, . . .
>
> Relief and extra Movement Directors will be compensated on a daily basis for each day assigned at the authorized rate of the position filled (without regard to any rate received by an occupant of the position as an incumbent rate)."

The record sets forth that Rule 4-A-2(a) was adopted verbatim from the Agreement of 1943, except for minor changes in job titles.

This controversy involves the construction of the exceptions set forth in Regulation 4-A-2(a). The first portion states that "Movement Directors shall be paid on an actual minute basis at 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;" this exclusion is not involved in this matter.

It is the contention of the employes that Regulation 4-A-1 establishes

eight (8) consecutive hours as a basic day, that Regulation 4-B-1 establishes a basic daily rate for each basic day assigned and that Regulation 4-A-2(a) establishes a penalty rate of time and one-half for all time worked in excess of eight (8) hours on any one day when transfer time is not involved. Transfer time is not involved in the instant claim, therefore Claimant asserts he is entitled to the difference between pro rata rate and time and one-half rate on an actual minute basis for all time worked in excess of eight (8) hours.

Carrier contends that the circumstances of this case bring it squarely within the second exception contained in Rule 4-A-2(a)—viz, "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." It is the claim of Carrier that the words "as such" in the second exception of Rule 4-A-2(a) means as such Movement Director.

In the Record, Carrier states that in the original drafting of Rule 4-A-2(a) in 1943, the language thereof was proposed by it and when it drafted the rule it fully intended the words "as such" as used therein to refer to and mean a Movement Director as an extra man and that the present Agreement fails to disclose even so much as a suggestion that these words were intended or understood by either party thereto to mean otherwise.

Carrier further sets forth in the record, that in August, 1954, in the Conemagh Division in the Carrier's former Central Region two claims on behalf of extra Movement Directors who had worked two consecutive eight-hour tours of duty. In each of said cases, Carrier informed the Organization of its position that Regulation 4-A-2(a) did not support the claim for time and one-half for a second tour of duty within twenty-four hours and further sets forth that there was no further progression of these cases and claims that non-progression constituted acquiescense.

Organization claims that the entire exception in Regulation No. 4 must be considered: that both parts of it refer to a relief Movement Director who has a regular assignment to work on two (2) positions and the latter part of such exception means and was so meant to mean an extra Movement Director working as such Relief Movement Director. The record shows that there was no relief assignment in the Northern Region Movement Office covering two positions by regular assignment on any day. On the day in question there was a vacancy on a regularly assigned Assistant Movement Director's position on first trick beginning at 6:00 A. M. and another vacancy on another regularly Assistant Movement Director in the same office on second trick beginning at 2:00 P. M. Claimant being the senior extra Movement Director was called for the first trick beginning at 6:00 A. M. There being no junior or extra Movement Director available for the second trick position beginning at 2:00 P. M., Claimant was required to continue on duty and work the second trick vacancy also, thus working sixteen consecutive hours.

Organization claims that a practice of paying punitive rate for the second eight hours has been in effect since the effective date of this Agreement with the exception of two claims filed in 1954. It admits that it did not progress the claims and denies that it accepted the Carrier's interpretation of Rule 4-A-2(a). It claims that during the handling of said claims on the property, Carrier discontinued the claimed violation and continued to pay penalty rate and that the practice of paying punitive rate for the second eight hours, in like circumstances has been in effect, from the effective date of the Agreement, with the exception of said two claims filed in August 1954 and Docket No. TD-10373, which has been before this Board and is now covered by Award No. 10235, dated December 11, 1961.

The Board in considering this matter has taken into consideration the long practice of the parties prior to August, 1954 and the disposition of the two cases filed in August, 1954 and the resumption of the practice of paying penalty rates following the disposition of these cases and this gives additional support to our conclusion as to the meaning of the language of Regulation 4-A-2(a). Awards 6840, 5079.

With reference to Carrier's statement relative to the drafting of Regulation 4-A-2 and the part it took in such drafting and the intent it claims in the use of the words "as such", it can only be said, as aptly expressed in Award 8380, "The meaning of a written agreement must be gathered from the language used in it where it is possible to do so. The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties. Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible. (Awards 6856 and 6872)"

A universal rule of construction is that where the language used is susceptible to 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 Awards No. 6664 and 10235.

We can come to no other conclusion but to hold as Referee Carey did in Award No. 10235, where he said "We find the Employe's interpretation to be the correct one. 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 exempting 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 in two positions 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."

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 Employe involved in this dispute are respectively Carrier and Employe 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 9th day of February, 1962.