Award No. 13062
Docket No. TD-14590

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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") violated the currently effective agreement between parties, Regulation 4-C-1 (a) thereof in particular, when it declined to compensate Extra Assistant Movement Director C. W. Kittell at the rate of time and one-half for service performed on December 4, 1962.

(b) The Carrier shall now be required to compensate the individual claimant in the amount of the difference between pro rata rate and time and one-half rate for service performed on December 4, 1962.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, effective June 1, 1960, copy of which is on file with your Honorable Board, and the same is incorporated into this submission by reference, as though fully set out.

Regulation 4-C-1 (a), Part II (page 60), material to this claim, is here quoted for ready reference:

"Each regularly assigned Movement Director will be entitled and required to take two (2) regularly assigned rest days per work week, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any Movement Director in excess of five (5) days per work week. A regularly assigned Movement Director required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.

An extra Movement Director occupying a temporary position or vacancy acquired under the provisions of paragraph (a) or (e) of Regulation 2-B-1 will take the regularly assigned working days and rest days of the assignment, and shall be paid at the rate of time and one-half for service performed on either or both of such rest days.

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

The Railway Labor Act, in Section 3, First, subsection (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 Agreement 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 such action.

CONCLUSION

The Carrier has shown that there was no violation of Regulation 4-C-1 (a) as claimed and there is nothing therein which would entitled the Claimant to the compensation he requested.

Therefore, the Carrier respectfully submits your Honorable Board should deny the claim of the Employes in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, C. W. Kittell, held a regular assignment as a Group 1 clerical employe. In addition, he served as an Extra Assistant Movement Director. On November 29 and 30 and December 1, 2, 3, and 4, 1962, he performed service as an Assistant Movement Director. Since he performed two tours of duty during the 24-hour period from 11:00 P.M. November 30 to 11:00 P.M. December 1, he received compensation at the time and one-half rate for his second tour of duty in that period in accordance with Regulation 4-A-2. For the remaining days, December 2, 3, and 4, he was compensated at the pro rata rate.

He makes claim for the punitive rate of pay for December 4, 1962 based upon Regulation 4-C-1 (a) which states:

> "Each regularly assigned Train Dispatcher will be entitled and required to take two (2) regularly assigned rest days per work week, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any Train Dispatcher in excess of five (5) days per work week. A regularly assigned Train Dispatcher required to perform service on the rest days assigned to his position will be paid at rate of time and one-half for service performed on either or both of such rest days.
>
> An extra Train Dispatcher occupying a temporary position or vacancy acquired under the provisions of paragraph (a) or (e) of Regulation 2-B-1 will take the regularly assigned working days and rest days of the assignment, and shall be paid at the rate of time and one-half for service performed on either or both of such rest days.
>
> Except as provided in the preceding paragraph, an extra Train Dispatcher required to work as Train Dispatcher in excess of five (5)

consecutive days of extra service shall be paid one and one-half times the basic straight time rate for work performed on either or both the sixth or seventh days, but shall not have the right to claim work on such sixth or seventh days when a junior extra man is available who can be paid for such day at the pro rata rate."

Mr. Kittell takes the position that under the rule he was entitled to the punitive rate of pay because he worked six consecutive days of extra service. He maintains that the six calendar days, on each of which he performed a tour of duty, make him clearly eligible for the time and one-half rate on the sixth day, December 4, 1962.

Central to this dispute is the question of what constitutes a day. Is a "day" determined by a tour of duty performed as Claimant contends, or is a "day" a period of twenty-four hours from the starting point of an assignment? There have been previous issues involving other rules which have required an interpretation of the phrase "on any day". In the Mediation Agreement of March 14, 1942, the National Mediation Board, contrary to the contentions of Carrier in that dispute that the phrase "on any day" means a tour of duty, found "on any day" to mean the 24 hours succeeding the commencement of an assignment. In the case at bar, Claimant acquiesced in this interpretation when he accepted the time and one-half rate for the second tour of duty within 24 hours. He maintains that this interpretation applies only to the phrase "on any day" used in the overtime regulation 4-A-2 of the Agreement under consideration and must not be construed to apply to a "day" elsewhere in the Agreement.

Although the interpretation of the National Mediation Board may have arisen in connection with an overtime issue, a number of Awards, including Awards 9839, 12115, and Fourth Division Award 1173 have construed the interpretation to extend to rest days. Furthermore, these opinions have also concurred in the recognition of the length of a workday to mean a 24-hour period computed from the starting point of a previous assignment. We find this interpretation applicable to Regulation 4-C-1 (a). It also provides a uniform and consistent meaning to the term "day" in the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1964.

DISSENT TO AWARD 13062, DOCKET TE-14590

The majority has again fallen into the error of basing its findings largely, if not primarily, upon cited and erroneous Awards.

Soundly established precedent is both desirable and material. Many Awards of this and other Divisions of the Board attest to the fact that such precedent should be deemed to be controlling. But this Board has never hesitated to disregard erroneous precedent. For as Award 10063 points out, "precedent is not gospel" and may result in "compounding mistakes and perpetuating error."

The Award of the majority, while recognizing that the National Mediation Board's definition of the term "on any day", relied upon the respondent in Docket TD 14590, directs itself exclusively to the overtime rule, nevertheless proceeds, relying upon but three, and incorrect Awards, to apply that definition to the rest day rule of the Agreement. It is submitted that this is erroneous and that it deprives the holding of the majority of any precedential value which the Award might otherwise have; therefore, I dissent.

H. C. Kohler

Labor Member
Third Division NRAB