

Award No. 14076

Docket No. TD-15354

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(a) The Chicago, Burlington & Quincy Railroad Company, (hereinafter referred to as "the Carrier"), violated the Agreement between the parties, Rule 17 (b) thereof in particular, by its failure to properly compensate Relief Train Dispatcher J. E. Roten for services performed on August 23 and August 30, 1964.

(b) The Carrier be required to additionally compensate the individual claim for 45 minutes at time and one-half rate of Chief Dispatcher for each of the dates specified in paragraph (a) hereof.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the Carrier and the Claimant Organization, copy of which is on file with your Honorable Board and by this reference it is made a part of this submission the same as though fully set out herein.

For ready reference of the Board the following pertinent parts of this Agreement which are material to the adjudication of this claim are quoted in their entirety:

"ARTICLE I.

SCOPE AND DEFINITIONS

Rule 1. Scope. The rules of this Agreement shall govern the hours of service, compensation and working conditions of train dispatchers. The term 'train dispatcher' as used in this Agreement shall include chief, night chief, assistant chief, trick relief or extra train dispatchers, provided however, that one chief dispatcher in each dispatching office shall be excepted from all of the provisions of this Agreement. However, he shall retain and accumulate seniority in accordance with Rule 14. It is understood that said excepted chief train dispatchers will be granted one assigned rest day each week and an annual vacation, and that appointments to such positions will be made from the ranks of dispatchers." (Emphasis ours.)

The Carrier summarizes its case as follows:

1. Carrier complied with special Rules 16(d) and 17(a) with respect to assignment and compensation of trick, night chief or assistant chief dispatchers relieving the chief dispatcher, and these rules prevail over general rules of the agreement.
2. Prior awards to the effect that relief chief dispatchers are not removed from the scope of the agreement on days they actually work as chief dispatchers are not disputed, but have no bearing here where special rules have been supplied to cover.
3. There is no distinction provided with respect to payment due a trick, night chief or assistant chief dispatcher used to relieve the chief dispatcher, regardless of whether this is on assigned rest days, account sickness, vacation, or any other reason.
4. The practice on the property since negotiation of Rules 16(d) and 17(a) into the collective agreement effective May 1, 1958, supports the Carrier's position that proper payment has been made under similar circumstances.
5. The Petitioner's contention that Rules 8(a) and 17(b) support the claim is unfounded and they have failed to submit proof of these assertions.

In view of the foregoing, this claim should be denied.

All data herein and herewith submitted have been previously submitted to the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant J. E. Roten, a Relief Train Dispatcher at Alliance, held an assignment (Position No. 10) in August 1964 bulletined, in part, as follows:

“Position No. 1 7:00 A. M. to 3:00 P. M., Fri. and Sat.

Chief Dispr. 7:00 A. M. to 4:00 P. M., Sun.

Position No. 2 7:00 A. M. to 3:00 P. M., Mon. and Tues.”

On August 23 and 30, 1964, both Sundays, Roten worked until 4:45 P. M. His claim for 45 minutes overtime pay for each of the two days was rejected by Carrier.

Rule 17 provides in part, as follows:

“(a) Eight (8) consecutive hours shall constitute a day's work, except that employees relieving the excepted chief dispatcher will take the hours and conditions of that assignment.

(b) Time worked continuous with and before or after the assigned hours, exclusive of the time required to make transfer, will be considered overtime and shall be paid for at the rate of time and one-half on the minute basis."

Rule 8 states in part:

"(a) Permanent vacancies and new positions shall be promptly bulletined to all eligible to bid. Each bulletin shall show the location, position, hours of assignment, compensation, and assigned rest days."

Rule 16 (d) states:

"(d) When a trick, night chief, or assistant chief dispatcher is required to relieve a chief dispatcher, (the latter position not being included within the scope of this agreement) he shall be compensated therefore at \$2.00 per day over the daily rate of a trick train dispatcher."

Petitioner argues that the overtime provisions of Rule 17 (b) apply to work performed by a Train Dispatcher on each day of his assignment, including the day he relieves the Chief Dispatcher. It buttresses its position by reference to the specific wording of the Bulletin under which Claimant was assigned (the hours for his Sunday relief assignment were listed as 7:00 A. M. to 4:00 P. M.) and points out that this relief position was established in accordance with Rule 8 (a)'s requirement that each bulletin show the "hours of assignment." Petitioner also suggests that its contentions find support in prior Awards such as Awards 4012, 5976, 7914 and others.

These arguments are not persuasive, in our judgment. Rule 8 (a) cannot be deemed controlling since it establishes no substantive rights. As was stated in Award 13195: ". . . A job bulletin is merely an advertisement . . . Its nature is informational, not contractual. It cannot be employed to create, modify or destroy legal relations such as those embodied in the basic Agreement . . ." Here, the Bulletin advertised the normal assigned hours of the Sunday relief position; it did not, explicitly or implicitly, purport to set forth what compensation, if any, would be forthcoming should the incumbent be required to work beyond 4:00 P. M.

The basic question, then, is whether Rule 17 (b)'s overtime provisions applied to the time worked by Claimant after 4:00 P. M. on the two days in question. Taken alone, this clause would appear to be applicable; however, it cannot be read out of context. Overtime pay, under Rule 17 (b), is earned when an employee works before or after (but continuous with) his assigned hours; those assigned hours are related to a day's work as defined in Rule 17 (a) as "eight . . . consecutive hours . . ." But 17 (a) contains an exception which applies to "employees relieving the excepted chief dispatcher." Under this exception, the relieving employees "will take the hours and conditions of that assignment." The parties knew, when they adopted this clause, that the chief dispatcher was not necessarily limited to an eight hour day and did not receive overtime compensation for hours in excess of eight. When the relieving employee took the hours and conditions of the chief dispatcher's assignment, consequently, he was not entitled to claim overtime after eight hours. The special provision of 17 (a) must prevail over the general provision in 17 (b). See Award 10713 among others. While Petitioner suggests that the 17(a) exception applies only to periods when the chief dispatcher is relieved on a semi-permanent basis (such as during periods of vacation or illness), the

rule contains no such limitation, nor is there any evidence that the rule has been accorded that interpretation on this property.

Under all the circumstances, and without giving any consideration to information contained in the submissions which was not presented on the property, it is our conclusion that the claim must be denied. Prior cited awards are not controlling since they did not deal with rules similar to the rule found in the contract here.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1966.