

Award No. 16837

Docket No. TD-17665

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SEABOARD COAST LINE RAILROAD COMPANY

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

(a) The Atlantic Coast Line Railroad Company (now Seaboard Coast Line Railroad Company) hereinafter referred to as "the Carrier" violated the Agreement between the parties, Article 2 thereof in particular, by its failure to compensate Night Chief Dispatcher L. E. Perry, for overtime service performed on February 28, March 8, March 9 and March 15, 1966.

(b) The Carrier be required to compensate Claimant Perry for overtime service performed on the specified dates as follows: One hour and fifteen minutes on February 28; fifteen minutes on March 8; twenty minutes on March 9, and forty minutes on March 15, 1966.

EMPLOYEES' STATEMENT OF FACTS: At the time here in question an Agreement was in effect between the Atlantic Coast Line Railroad Company (now part of the Seaboard Coast Line Railroad Company) and the claimant organization. A copy of that Agreement should be on file with this Board and by this reference the same is incorporated into this submission as a part thereof as though fully set out.

(NOTE: Pursuant to authority granted by the Interstate Commerce Commission the former Seaboard Air Line Railroad and the former Atlantic Coast Line Railroad Company were merged into and became the Seaboard Coast Line Railroad Company, effective on or about July 1, 1967. The schedule agreement negotiated by the parties and applicable to the merged Carrier, patterned after and in much the same terms as that applicable to the former Seaboard Air Line Railroad Company, is not involved in this dispute.)

Article 2 of the Agreement in effect and applicable to the former Atlantic Coast Line Railroad Company at the time the instant dispute arose is here quoted in pertinent part for ready reference.

OPINION OF BOARD: The claim herein seeks payment for time at the overtime rate which the Claimant, Night Chief Dispatcher at Tampa, Florida, with assigned hours 7:00 P. M. to 3:00 A. M., alleges was necessary for him to complete his work on the dates involved in the claim. The amounts claimed are:

February 28, 1966 - 1 hour 15 minutes

March 8, 1966 - 15 minutes

March 9, 1966 - 20 minutes

March 15, 1966 - 40 minutes

The record shows that on the night of February 15-16, 1966, Claimant advised the Chief Dispatcher that it was necessary for him to perform certain work after 3:00 A. M., and made a claim for one hour and thirty minutes' overtime. That claim was subsequently allowed. On February 16, 1966, the Chief Dispatcher advised the Claimant in writing:

"Mr. L. E. Perry - NCD

Referring your memo date making claim for one hour and 30 minutes' overtime account checking time tickets most of which was done after 3:00 A. M.

I cannot continue to allow overtime on the Night Chief Dispatcher assignment consistently as this assignment has been in effect for many years and other personnel have worked it without overtime, while there is no appreciable difference in duties. Time tickets should be checked prior to 3:00 A. M.

/s/ M. R. Herring"

Notwithstanding the above quoted advice from the Chief Dispatcher, the Claimant submitted the claims subject to dispute herein.

It is recognized by the Petitioner that it is a prerogative of management to determine whether overtime is to be worked, but it contends that as Claimant had instructions that certain work was to be performed, he is entitled to the overtime that he (Claimant) considered necessary to perform that work.

This Board has held on numerous occasions that, absent directions and authority, voluntary service cannot be asserted to support a claim. In the opinion of the Board, that principle is applicable here. The Claimant had been advised by his superior on February 16, 1966, that overtime would not be allowed consistently on the Night Chief Dispatcher assignment. The Claimant was not instructed or required by proper authority to put in the overtime claimed. The claim will be denied.

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 the Agreement 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 19th day of December 1968.